

FOR THE COUNTY OF SAN LUIS OBISPO

* * *

IN THE MATTER OF:)
)
Discharges of Waster from)
Individual or Community)
Sewage Disposal Systems in)
the Los Osos/Baywood Park)
Prohibition Zone (CCRWQCB)
Resolution NO. 83-13,)
Basin plan p. IV-67))
)
)
)
_____)

DEPOSITION OF ROGER W. BRIGGS

SAN LUIS OBISPO, CALIFORNIA

WEDNESDAY, OCTOBER 4, 2006

9:06 A.M. - 12:57 P.M.

REPORTED BY CAROLYNN E. SPERE, CSR #10091

1 THE DEPOSITION OF ROGER BRIGGS
2 WAS TAKEN AT THE OFFICES OF McDANIEL SHORTHAND REPORTERS,
3 1302 OSOS STREET, SAN LUIS OBISPO, CALIFORNIA, BEFORE
4 CAROLYNN E. SPERE, A CERTIFIED SHORTHAND REPORTER IN AND
5 FOR THE STATE OF CALIFORNIA, ON WEDNESDAY, OCTOBER 4,
6 2006, COMMENCING AT THE HOUR OF 9:06 A.M.

7

8 APPEARANCES OF COUNSEL:

9 FOR CALIFORNIA WATER BOARDS:

10 STATE WATER RESOURCES CONTROL BOARD
11 OFFICE OF ENFORCEMENT
12 1001 I STREET
13 SACRAMENTO, CALIFORNIA 95814
14 BY: REED SATO
15 (916) 341-5889

16 ALSO PRESENT: ROB SHIPE
17 BILL MOYLAN, VIDEOGRAPHER
18 CHRISTOPHER ALLEBE
19 LARRY BISHOP
20 JAN DERGARABEDIAN
21 BRUCE PAYNE

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1 MR. SHIPE: My name is Rob Shipe. I am one of
2 the CDO Defendants in the Regional Water Quality Control
3 Boards prosecution of individuals in Los Osos.

4 MR. BISHOP: I'm Larry Bishop, a CDO recipient.

5 MR. PAYNE: I'm Bruce Payne, CDO recipient.

6 MS. DERGARABEDIAN: I'm Jan Dergarabedian, a CDO
7 recipient.

8 MR. MR. ALLEBE: I'm Chris Allebe, a CDO No. 19.

9 MR. SATO: My name is Reed Sato. I am counsel
10 for Roger Briggs.

11 THE WITNESS: Roger Briggs, executive officer of
12 the Regional Water Quality Control Board.

13 MR. SATO: Ma'am Reporter, before we get started
14 with the deposition, there is a number of objections that
15 I want to place on the record.

16 First of all with regard to Mr. Moylan, I
17 understand that Mr. Moylan is not a certified
18 videographer.

19 Is that correct, Mr. Moylan?

20 MR. MOYLAN: That's correct.

21 MR. SATO: And so, therefore, you have no legal
22 status as a legal stenographer or a videographer; is that
23 correct?

24 THE WITNESS: That is correct.

25 MR. SATO: On that basis, we've told Mr. Moylan

1 that he can videotape this deposition. we will object to
2 the use of this videotape to the extent that it is
3 introduced as any type of record or evidence of this
4 proceeding because of the fact that Mr. Moylan is not a
5 certified stenographer, videographer or otherwise legally
6 authorized to conduct such a videotape.

7 MR. MOYLAN: I would like to object to that.

8 MR. SATO: Let me finish my comment.

9 However, I appreciate the fact that Mr. Moylan
10 has indicated that he will provide me with a copy of the
11 videotape, and I will be happy to compensate Mr. Moylan
12 for the expense of whatever the cost of the tape is. If
13 you want to provide it to me on videotape or if you are
14 going to burn a DVD, that would be even better; however,
15 that is. So I just want to interpose and make known for
16 the record my objection as to Mr. Moylan.

17 MR. MOYLAN: I have an objection to Mr. Sato's
18 objection. And my objection is that prior to even
19 starting the filming of this, we agreed that I would go
20 along with any of the rules and regulations regarding
21 videotaping this deposition, so I don't understand why
22 this shouldn't be allowed to be used, the film, shouldn't
23 be allowed to be used in a court proceeding at all, if I
24 go along with all the rules and regulations.

25 For instance, if Mr. Sato says, "I want this off

1 the record," and Mr. Shipe agrees, or anyone else agrees,
2 I would stop the videotaping at that point in time, and
3 then off-the-record comments could occur. So in that
4 regard, I do object to this not being used as a legal
5 tape.

6 MR. SATO: All right. And thank you,
7 Mr. Moylan.

8 And we have another objection to this deposition
9 here today. First of all, it is our position that
10 Mr. Briggs is appearing here voluntarily, not pursuant to
11 the -- necessarily pursuant to this Notice of Taking of
12 Deposition of Roger Briggs that was served on the Regional
13 Board, dated September 29th, 2006.

14 As we have indicated in e-mails to Mr. Shipe
15 previously, we believe that the Notice of Taking
16 Deposition of Mr. Briggs that's provided here -- and I
17 assume, Mr. Shipe, that you will introduce as an exhibit.

18 MR. SHIPE: I'm sorry. Introduce what as an
19 exhibit?

20 MR. SATO: This document as an exhibit for this
21 deposition.

22 MR. SHIPE: I probably will, yes.

23 MR. SATO: All right. So if Mr. Shipe does not,
24 then I will do that.

25 But we believe that this particular notice is

1 defective on its face; and two, was not timely served on
2 Mr. Briggs for the purposes of compelling his attendance.
3 What we had indicated to Mr. Shipe previously was that
4 after we learned that Mr. Shipe was inquiring of the
5 Regional Board staff, Mr. Thomas, about the issuance of a
6 subpoena, that we indicated that we could be available for
7 a deposition of Mr. Briggs on October 4, 2006, between
8 9:00 a.m. and 3:00 p.m., and all we required from
9 Mr. Shipe was a notice that the deposition would in fact
10 take place between that time and to let us know about the
11 court reporters, the locations of the deposition. We had
12 offered the Regional Board offices for the deposition, if
13 that would be more convenient.

14 And we also asked that he advise us as to who
15 the potential people who received the CDOs, I believe, who
16 were going to be participating in the deposition. And
17 there may be some other things that we indicated. But
18 primarily our representation or our representation to Mr.
19 Shipe was we would be available for an oral deposition.
20 We did not agree that we would be -- and there was no
21 discussion in my mind of any production of documents,
22 pursuant to any kind of deposition. We were surprised to
23 see that in this document provided to -- entitled, "Notice
24 of Taking Deposition of Roger Briggs," that there was, in
25 fact, request for documents to be produced.

1 Now, with regard to the documents to be
2 produced, even though we object to that, and we think the
3 request was untimely, we have indicated to Mr. Shipe that
4 we were going to bring documents to this deposition today
5 that we believe were responsive to his request. We do so
6 voluntarily, however.

7 Also, I might add, that Mr. Shipe and I also had
8 a conversation last night in which he indicated that he
9 wanted to make sure this was a legal deposition. We
10 believe that to the extent that it's taken -- we are
11 providing testimony, that is a legal deposition. And we
12 are prepared to be here through the time period that we
13 indicated we would be available, based upon Mr. Briggs'
14 schedule. We are hopeful that the issue that we have
15 about the time will kind of take care of itself, because
16 we are hoping that the deposition will be concluded by the
17 appropriate time period by 3:00 p.m. that we indicated
18 that Mr. Briggs was available. If it isn't, then we can
19 talk about that issue at that time. That is our
20 objection.

21 MR. SHIPE: And we addressed that objection to
22 Mr. Thomas yesterday, or actually to you, and Mr. Thomas
23 was cc'd on my response to that. And so how this ends up
24 will be his determination, or Mr. Young.

25 MR. BISHOP: My comment, if I can put this into

1 the English. As far as you are concerned, this is
2 considered a legal deposition but not fully supported by a
3 subpoena and following all the rules of a subpoena and
4 that type of deposition? So does that leave Roger Briggs
5 open for others to still subpoena him through the whole
6 process at a future date?

7 MR. SATO: No. And I'm sorry, I am not exactly
8 sure what questions you are asking me. Because what we
9 said was Mr. Briggs is going to voluntarily appear here to
10 allow you folks to take his deposition. We don't know who
11 you've noticed. And we will take the position that we've
12 made Mr. Briggs available for this proceeding on this date
13 and that this is the date that he will answer questions
14 from anybody effected by the Los Osos cease and desist
15 order issued.

16 MR. BISHOP: So he is here by his voluntary
17 response and not per any subpoena or the requested
18 procedure?

19 MR. SATO: Right. There is -- number one, there
20 is no subpoena, as far as I know. And I don't think that
21 Mr. Shipe would consider -- I will let Mr. Shipe speak for
22 himself as to whether this document, he believes this to
23 be a, quote/unquote, subpoena. But Mr. Briggs is here
24 voluntarily, and it will have the effect --

25 MR. BISHOP: So this does not waive our right to

1 subpoena at a future date?

2 MR. SATO: I don't know. When you say waives
3 your right, I think, as I just said, if you are here, you
4 have the ability to take his deposition. You will not be
5 able to take his deposition some other date.

6 MR. BISHOP: But others will.

7 MR. SATO: I can't say for others. I don't know
8 who has been noticed or not noticed.

9 MR. BISHOP: Well, I came here finding out that
10 this may not be a full legal deposition, and that you may
11 have the right to just not answer the questions that you
12 feel not to answer questions.

13 MR. SATO: And that, sir, is not based upon the
14 fact that this is a legal or not legal deposition. In any
15 deposition, I am entitled to make certain objections and
16 make certain instructions to Mr. Briggs. If Mr. Briggs
17 chooses to follow those chooses, then there is a procedure
18 which, I believe, you are entitled to avail yourself of
19 if you disagree with the conduct of Mr. Briggs as a result
20 of my instructions, so that you certainly have as a result
21 of participating in this proceeding. So hopefully that
22 assuages one of your concerns.

23 MR. BISHOP: Well, the concern has been made to
24 me this morning that if we sit here at this meeting, that
25 they lose their rights to subpoena Mr. Briggs in the

1 future.

2 MR. SATO: I can't give you legal advice on that
3 issue.

4 Any other preliminary comments?

5 MR. BISHOP: So you can't give me legal advice,
6 but you can say that --

7 MR. SATO: Our position would be that this
8 deposition notice, provided by Mr. Shipe, indicated that
9 certain people would be here as part of this proceeding
10 and will be asking questions. We believe that this is the
11 time for them to ask questions. And I think, Mr. Bishop,
12 you are one of the people that was identified, as we
13 requested, when we voluntarily agreed to this proceeding
14 that we be notified who is going to ask us questions. And
15 maybe we need to have this discussion at the end of the
16 day, if you haven't had the opportunity to ask the
17 questions that you want to ask.

18 MR. BISHOP: My concern is that because of
19 e-mails from, evidently, you last night have gone around,
20 that there are people that wish to ask questions that did
21 not show up today because of your e-mails.

22 MR. SATO: I have no knowledge of that. The
23 only person that I sent the e-mail to was to Mr. Shipe.
24 And I believe that they were copied to people that
25 Mr. Shipe had initially contacted. And I can't remember

1 who all these people were.

2 MR. BISHOP: Okay.

3 MR. SHIPE: Okay.

4 MR. PAYNE: First off, I'd like to thank you --

5 THE REPORTER: Wait a minute. Is he starting

6 the questioning?

7 MR. SHIPE: I was going to start the

8 questioning. Did you have preliminary things that you

9 wanted to discuss or do you want to get to the

10 questioning?

11 MR. PAYNE: Preliminary.

12 I would like to thank you for showing up

13 voluntarily. I am sorry you won't be here for the hearing

14 on the 2nd and the 9th because I believe that would be

15 very important for you to be there.

16

17 ROGER BRIGGS,

18 A WITNESS HEREIN, BEING FIRST DULY SWORN, WAS

19 EXAMINED AND TESTIFIED AS FOLLOWS:

20

21 EXAMINATION

22 BY MR. SHIPE:

23 Q. Mr. Briggs, how long have you been an employee

24 of the State of California?

25 A. I am in my 32nd year.

1 Q. And how many years with Regional Water Quality
2 Control Board here on the Central Coast?

3 A. The same.

4 Q. And what jobs have you had within the Regional
5 Water Quality Control Board?

6 A. I started as line staff. I was an engineer, and
7 then I became a senior engineer and then -- it is called
8 supervising engineer, which is also the same as assistant
9 executive officer. That was for seven years. And then I
10 was appointed executive officer in 1994.

11 Q. And you have given previous depositions; is that
12 correct?

13 A. Yes.

14 Q. And in those previous depositions, you have
15 given information regarding your education; is that
16 correct?

17 A. Yes.

18 Q. And was that information accurate?

19 A. Yes.

20 Q. And are you physically able to give accurate
21 testimony today?

22 A. Yes.

23 Q. Have you been under the influence of any drugs
24 or alcohol?

25 A. No.

1 Q. Is there any other reason that you would not be
2 able to give accurate testimony today?

3 A. No.

4 Q. And where have you obtained training on septic
5 systems?

6 MR. SATO: Objection; vague and ambiguous.
7 Lacks foundation.

8 THE WITNESS: I will go ahead and answer the
9 question. I had training in school and then subsequent
10 on-the-job training and on-the-job experience and also
11 personal experience.

12 BY MR. SHIPE:

13 Q. Have you attended any classes on the biology of
14 how sewage is processed?

15 A. Yes.

16 Q. What is your purpose of issuing cease and desist
17 orders to individuals in Los Osos?

18 A. We've had --

19 MR. SATO: Wait. Objection; vague and
20 ambiguous. Lacks foundation.

21 MR. SHIPE: How does it lack foundation?

22 Okay. Let's set the foundation.

23 Q. Who made the decision to issue cease and desist
24 orders to individuals in Los Osos?

25 MR. SATO: Let me just interpose one objection.

1 It's ambiguous, Mr. Shipe, because I don't know whether
2 you are talking about the original set of cease and desist
3 orders or the current crop of cease and desist orders that
4 are part of your current proceedings.

5 MR. SHIPE: So there was a previous crop of
6 cease interest desist orders that was issued to
7 individuals?

8 MR. SATO: I am talking about the proposed. I
9 am not sure they were issued, but proposed.

10 MR. SHIPE: Okay.

11 MR. SATO: And I didn't know which group you are
12 talking about because, as you know, there are different
13 prosecution teams, so I didn't know.

14 MR. SHIPE: Okay. So you are saying that there
15 are different prosecution teams, so Mr. Briggs is no
16 longer on the prosecution team?

17 MR. SATO: You have to ask him that, but that's
18 the ambiguity I was trying to help you with.

19 BY MR. SHIPE:

20 Q. Mr. Briggs, are you part of the prosecution
21 team?

22 A. I have delegated responsibility for leading the
23 prosecution team to Harvey Packard.

24 Q. But are you a part of the prosecution team?

25 A. I have participated, but my participation has

1 been greatly reduced.

2 Q. Okay. So you are currently a part of the

3 prosecution team?

4 MR. SATO: Objection; asked and answered.

5 THE WITNESS: Thank you.

6 MR. SATO: He can respond.

7 MR. SHIPE: He has not answered the question.

8 He has said that he kind of is, and it's a yes-or-no

9 question.

10 Q. Are you, yes or no, a part of the prosecution

11 team?

12 A. I have participated -- been participating as

13 part of the prosecution team, yes, but in a greatly

14 reduced capacity.

15 Q. Okay. So originally, who made the decision to

16 bring cease and desist orders to individuals in Los Osos?

17 A. Originally, that was my decision.

18 Q. Okay.

19 A. By "originally," we are referring to the first

20 batch, if you will.

21 Q. Yes. And what was the purpose for issuing those

22 cease and desist orders to individuals in Los Osos?

23 A. The primary purpose was to try to obtain

24 compliance, as the Regional Board has been trying to do

25 for a great number of years.

1 Q. And have any formal enforcement measures against
2 individual homeowners been issued in the prohibition zone?
3 A. Yes.
4 MR. SATO: Objection; vague and ambiguous as to
5 the term "formal enforcement orders."
6 MR. SHIPE: Formal enforcement orders is a part
7 of their Water Quality Enforcement procedures. There is
8 formal enforcement and there is informal enforcement.
9 Q. Mr. Briggs, do you understand the difference
10 between formal enforcement and informal enforcement?
11 A. I can make the distinction.
12 MR. SHIPE: So therefore, if he can make the
13 distinction between formal enforcement and informal
14 enforcement, since he has been an executive officer since
15 1994, he should be able to determine whether or not formal
16 enforcement measures have been leveled or have been used
17 against individual homeowners within the prohibition zone.
18 There is nothing vague about it.
19 MR. SATO: I am just preserving my objections
20 for the record.
21 THE WITNESS: So the question again, was?
22 BY MR. SHIPE:
23 Q. Have any formal enforcement measures against
24 individual homeowners been issued in the prohibition zone?
25 A. I believe the answer is yes, cease and desist

1 orders.

2 Q. And when were those issued?

3 A. I can't tell you the exact years, but we had
4 specific cases that were unusual cases having to do with
5 when houses were permitted to be built versus the
6 establishment of the prohibition zone and whether or not
7 they fell under the terms of the prohibition, the original
8 prohibition back in 1983, which then was effective in
9 1988. So it would have been after 1988, I presume.
10 Probably around '89 or '90.

11 Q. Now, what was the eventual result of those cease
12 and desist orders?

13 A. The -- again, I say it's my recollection. If I
14 am remembering correctly, we will have individual orders.
15 And it was basically putting those people on notice that
16 they had to connect to a sewer system when a sewer system
17 was available. And again, if I am remembering right, they
18 had some monitoring to do.

19 Q. Okay. Approximately how many people were issued
20 those cease and desist orders?

21 A. It was a small number. It seems to me that
22 there was a group of perhaps five that were part of the
23 same development, and then there was at least one other
24 individual. That was Mr. Bach. It was a special case, as
25 I was referring to.

1 Q. What were the details of that special case?

2 A. Well, again, it had to do with his -- it goes

3 back a lot of years. My recollection is it had to do with

4 his claim of having a project in the pipeline, I think was

5 the phrase that we used at that time, as far as

6 permitting --

7 Q. Okay.

8 A. -- when the prohibition was effective. And

9 there was some extenuating circumstances as far as his

10 wife's illness and need for a special house to accommodate

11 her illness.

12 Q. Okay. Have any informal enforcement measures

13 been used against individual homeowners in the prohibition

14 zone?

15 MR. SATO: Objection; vague and ambiguous as use

16 of the term "formal enforcement," or "informal

17 enforcement," excuse me.

18 THE WITNESS: None are coming to me.

19 BY MR. SHIPE:

20 Q. Has the Regional Water Quality Control Board at

21 any time notified any individual homeowners in the

22 prohibition zone that they are violation of discharge

23 prohibition with the exception of the other cease and

24 desist orders that were issued and the 45 cease and desist

25 orders that are pending at this time?

1 A. Yes.

2 Q. When?

3 A. Again, I don't know the year, but this would be
4 on the order of -- I am guessing -- four years ago when we
5 did a mass mailing to every person that was in -- that we
6 had in our database. So we attempted to get every address
7 of every individual that was in the prohibition zone. And
8 we mailed out a cover letter and also the so-called
9 Frequently Asked Questions, which we had posted on our
10 website, which discuss the prohibition zone and the
11 illegal discharges and the need for a solution.

12 Q. Why were only 50 cease and desist orders
13 attempted at this time?

14 A. Well, this was something that was -- that we
15 hadn't done before as far as enforcement actions for so
16 many individuals. And we thought it might be helpful to
17 be a smaller group and see how it goes and then make
18 modifications based on what we learned so that we could
19 proceed for the entire group.

20 Q. And again, can you state for the record why five
21 were eliminated?

22 A. I believe all five -- all five were in areas
23 that were already connected to a community sewer. So if I
24 can expand on that, so therefore, they did not have
25 individual discharges.

1 Q. Okay. At the hearing, you testified that it
2 will take between zero and seven years to complete the CDO
3 process. Do you still stand by that?
4 A. I don't believe I testified to that.
5 Q. Actually, you did.
6 A. No. I believe, if I am right, Mr. Anstat made a
7 calculation and said that -- it was along the lines that
8 if -- he made assumptions about how long the proceeding
9 was taking and that he multiplied that times the factor
10 that would be required for all parties, and he came up
11 with seven years.
12 Q. And you agreed to the term? His question to you
13 was, "So you believe that will be between zero and seven
14 years?" It will take between zero and seven years.
15 A. Oh, between zero and seven years?
16 Q. Yes.
17 A. That's true.
18 Q. Okay. So you still believe that it will take
19 between zero and seven years?
20 A. Yes.
21 Q. If you believe it will take between zero and
22 seven years, why use the 2010 deadline?
23 A. That's within seven years.
24 Q. So do you believe you will be completed by the
25 2010 deadline?

1 A. We hope to, and I think it's doable.

2 Q. Did you do a cost analysis and time line on this

3 effort before proceeding with the processing 4300 cease

4 and desist orders?

5 MR. SATO: Objection; vague and ambiguous as to

6 the term "cost analysis."

7 THE WITNESS: I don't know what you mean by

8 "cost analysis."

9 BY MR. SHIPE:

10 Q. Did you consider the cost to the taxpayers of

11 California in the efforts that you are now undertaking?

12 A. We did consider the use of staff time in terms

13 of effectiveness, yes.

14 Q. And did you make written notations regarding

15 that?

16 A. No.

17 Q. And who did you discuss that with?

18 A. I don't remember specific discussions, but that

19 would have been the prosecution team.

20 Q. Did you consider other options?

21 A. Yes.

22 Q. What other options did you consider?

23 A. We've described options in the staff report,

24 such as cleanup abatement orders, administrative civil

25 liabilities, referral to the Attorney General.

1 Q. Did you consider informal enforcement measures?

2 MR. SATO: Objection; vague and ambiguous as to

3 the use of the term "formal enforcement measures."

4 MR. SHIPE: Informal.

5 MR. SATO: Informal. Thank you.

6 MR. SHIPE: You are welcome.

7 THE WITNESS: Well, we have actually used

8 informal -- we have used formal and informal in the past.

9 BY MR. SHIPE:

10 Q. So you did not consider informal at this time?

11 A. We went beyond considering it. We have already

12 employed formal and informal enforcement in the past.

13 Q. How did you go about choosing the 50 people that

14 you originally selected?

15 A. We decided that selecting people randomly would

16 be the most fair, so we selected people randomly.

17 Q. When the case was started over, why did you not

18 draw another 50?

19 A. We didn't --

20 MR. SATO: Objection to the extent that it calls

21 for discussion with legal counsel. It's an invasion of

22 attorney-client communication.

23 If you have the ability to answer without

24 referring to that legal advice, please go ahead. But if

25 you can't, then I direct you not to answer.

1 THE WITNESS: Yeah. I would say it's better not
2 to answer that one.

3 BY MR. SHIPE:

4 Q. Okay. Did you consider drawing another 50?

5 A. I will stick with Counsel's advice.

6 Q. I am not asking whether or not counsel advised
7 you. I am asking, in your mind, did you consider drawing
8 another 50?

9 A. I don't believe I did.

10 Q. So you did not consider drawing another 50?

11 A. No. I know that that was brought up as an
12 option later, but I think that was after the fact, if I
13 remember correctly. And by "brought up," I mean by
14 parties.

15 Q. And when did you originally decide to issue
16 cease and desist orders to individual homeowners in
17 Los Osos?

18 A. Well, we have considered -- it's a hard question
19 to answer because we have considered enforcement actions
20 for many years. And I have already testified to that
21 fact. Of course, that information is available.

22 Q. But not on this scale?

23 A. No. We've considered individual enforcement
24 actions for many years. And I indicated in the October 6
25 of 2005 letter, which transmitted the administrative civil

1 liabilities to the Los Osos Civil Community Services
2 District, that we intended to proceed with individual
3 enforcement actions. So in terms of a formal announcement
4 of deciding to proceed with individual enforcement
5 actions, we did so at that time.

6 Q. When was the actual decision made, as opposed to
7 announced?

8 A. Well, we had indicated to the Los Osos Community
9 Services District that there would be enforcement actions
10 if the district chose to delay the solution to the
11 prohibition zone. And we were actively considering
12 various means of enforcement at that time. And then,
13 pardon me, of course we've had many correspondence, pieces
14 of correspondence with the District to that effect over
15 the years. But I directly spoke to the Community Services
16 District during a January 2005 District board meeting and
17 talked to them about enforcement actions, I would say
18 generically, that would be severe.

19 And so, like I say, we had enforcement actions
20 in terms of various options under discussion, and we
21 formally announced individual enforcement actions October
22 6th.

23 Q. So you started the process prior to the
24 election?

25 A. The process?

1 Q. The deliberative process of deciding to do this.
2 You had pretty much -- that was decided prior to the
3 election, if the election did not go as you hoped?
4 A. Well, we weren't in the business of advocating
5 anything as far as elections go. And so we addressed
6 ourselves to the District's violation of the time schedule
7 or of the cease and desist orders and of basic plan
8 prohibition. And we were referring to their decision to
9 keep proceeding, which was the only thing that staved off
10 enforcement action in the previous years, versus deciding
11 to stop proceedings. So that's what we were addressing,
12 not the election.
13 MR. SATO: I want to note for the record that
14 Mr. Moylan has left the room. It is 9:40, according to my
15 watch.
16 (Mr. Moylan returned to the proceedings.)
17 BY MR. SHIPE:
18 Q. You stated that you had sent letters to all the
19 homes within the prohibition zone?
20 A. All that we knew of, yes.
21 Q. When you sent those letters out, what was
22 contained within those letters?
23 A. Well, as I already said, it indicated that there
24 was a prohibition zone and illegal discharges, and that it
25 was necessary for the community, the individuals to comply

1 with the prohibition zone, and a lot of other information,
2 like I said, that was contained in our Frequently Asked
3 Questions. So we had a number of questions that were
4 commonly asked over the years, and we thought it would be
5 a good idea to try to put those into one kind of concise
6 document and/or a number of documents. Actually, there
7 were a series of Frequently Asked Questions, and get that
8 out to the community to the individuals.

9 Q. Have you advised the Central Coast Regional
10 Water Quality Control Board in any Los Osos issues since
11 April 28, 2006?

12 MR. SATO: Objection to the use of the term
13 "advised on Los Osos issues," because that can be a very
14 broad category.

15 MR. SHIPE: It is a very broad category that was
16 established by Chairman Young.

17 MR. SATO: Well, I disagree with your
18 characterization. But I think it's vague and ambiguous to
19 the extent that you used the broad term "Los Osos." If
20 you want to ask about specific issues.

21 BY MR. SHIPE:

22 Q. Have you advised the Central Coast Regional
23 Water Quality Control Board in Los Osos on cease and
24 desist issues since the April 28th hearing?

25 A. No.

1 Q. Have you advised the Board on any Los Osos sewer
2 issues?
3 A. No.
4 Q. Have you advised the board on any Los Osos
5 septic issues?
6 A. Los Osos septic issues?
7 Q. Yes.
8 A. No.
9 Q. Have you advised the Board on any issues
10 regarding the prohibition zone?
11 A. No, I don't believe so.
12 Q. And have you advised the Board -- have you given
13 the Board any advice regarding communications with
14 individuals within Los Osos?
15 A. Any advice? No, not that I can think of.
16 Q. On September 9th, 2006, several times you were
17 witnessed holding a comment card and looking at Defendant
18 Rob Shipe, then conferring with Chairman Young. What was
19 the point of that conversation?
20 A. On what date?
21 Q. On September 9th, 2006, in Monterey.
22 A. Well, at the September meeting, one of the items
23 on the agenda was the calendar for the upcoming year, that
24 is for 2007. And the Board did talk about the timing of
25 Board meetings, which included Los Osos hearings coming

1 up.

2 Q. That wasn't my question. I will repeat it again
3 for you. On September 9th, 2006, several times you were
4 witnessed holding a comment card, one of the white comment
5 cards that individuals fill out so that they can speak
6 before the Board, and looking at Defendant Rob Shipe, both
7 you and Chairman Young were witnessed looking at Rob
8 Shipe, then conferring with each other. What was the
9 point of that conversation?

10 A. I don't remember exactly what you are talking
11 about. But I can tell you that I receive all the
12 testimony cards, and I typically let the chairman know
13 what someone has appeared for and what they have indicated
14 on the card as far as why they are there.

15 So for example, I don't know if you checked
16 "public forum," but I would typically say, "This is for
17 public forum. This group of cards is for public forum,"
18 or "This person checked that they want to speak on two
19 different items." So it has to do with conduct of the
20 meeting.

21 Q. Did you give Chairman Young any advice during
22 these conversations?

23 A. Not that I recall.

24 Q. Did you make any suggestions?

25 A. Did I make any suggestions?

1 Q. Yes.

2 A. To Chairman Young?

3 Q. To Chairman Young.

4 A. Regarding your card?

5 Q. Yes.

6 A. Not that I recall.

7 Q. Have you given any advice to any other members

8 of the Regional Water Quality Control Board on the CDO

9 issues, the sewer, the septic or the prohibition zone?

10 A. Not that I recall.

11 Q. Did you have any input on the selection of the

12 date for the new cease and desist order hearings?

13 A. No.

14 MR. SHIPE: I would like to submit a document.

15 (Deposition Exhibit No. 1 marked for

16 identification.)

17 MR. SATO: I'm sorry. Is there a pending

18 question?

19 MR. SHIPE: No. I am letting him take a look at

20 it.

21 Q. Do you remember this exhibit?

22 A. Yes, I do.

23 Q. Do you remember the conversation that spurred

24 this exhibit?

25 A. It seems to me that you and I spoke on the

1 phone.

2 Q. Yes. And when we spoke on the phone, do you
3 recall what you told me regarding -- I had spoken with you
4 about the fact that I had not been noticed previously.

5 A. Uh-huh.

6 Q. And you stated that when I purchased my home, I
7 signed a disclosure that informed me of my -- of the
8 discharge prohibition.

9 A. I don't think that I would have said that you
10 signed a disclosure because I wouldn't have any way of
11 knowing what you signed.

12 Q. Actually, that was the term that you used. And
13 the reason I remember that so clearly is because the next
14 day, that disclosure stuck in my head. And I went down
15 and spoke with several local realtors to find out exactly
16 what was in that disclosure that I signed. And I got a
17 copy of the disclosures along with some other
18 documentation, and I faxed that to you. And when I faxed
19 it over, I explained to you what it said. And I asked
20 you, "Is this going to make a difference?" And you said,
21 "Maybe."

22 Do you remember that conversation?

23 MR. SATO: Let me just object to the testimony
24 that's been provided by Mr. Shipe.

25 But he can answer your last question.

1 MR. SHIPE: Yes.

2 THE WITNESS: No. I don't specifically remember
3 that question and answer. And as far as me saying that
4 you signed something, it seems to me that we talked about
5 the fact that realtors are to disclose, as part of
6 property transfer, that there is a discharge prohibition,
7 so I think that's what we were talking about. I wouldn't
8 have been able to tell you what you actually signed.

9 BY MR. SHIPE:

10 Q. Did you look over the disclosure paperwork that
11 I faxed over to you?

12 A. I did at the time.

13 Q. Is there anything within there that states that
14 the home I was about to purchase had a septic tank that
15 was illegally discharging?

16 MR. SATO: Objection. The document speaks for
17 itself.

18 THE WITNESS: I would have to rereview the
19 document before I could answer that question.

20 BY MR. SHIPE:

21 Q. Okay. Feel free.

22 Actually, the residential disclosure is not that
23 page but the other two pages, the one -- the pages that
24 say "Residential Disclosure."

25 MR. SATO: The document that you are referring

1 to appears to be printed on something that says "Laser
2 Jet" at the top page, part one.

3 MR. SHIPE: Yes.

4 THE WITNESS: Well, before I jump to that, I
5 see, No. 1, of Los Osos Building Moritorium, it refers to
6 a prohibition area. And the previous paragraph refers to
7 sewage discharge.

8 BY MR. SHIPE:

9 Q. We will be talking about that in just a second.
10 Answer this question for me first, please.

11 A. As far as the --

12 Q. Residential disclosure.

13 A. I was assuming that this was part of that.

14 Q. That's what I was trying to explain to you
15 earlier, that the two pages are entitled residential
16 disclosure are the disclosure.

17 A. Uh-huh.

18 MR. SATO: To the extent that these are separate
19 documents, I will make the same objection that the
20 document speaks for itself as to the residential
21 disclosure form, which I notice -- you are just talking
22 about the form itself, correct?

23 MR. SHIPE: Yes.

24 Q. Does the form state that the home I am about to
25 purchase has a septic tank that is illegally discharging?

1 A. Well, there is a box here for a building
2 moritorium area on -- I guess this is the first page of
3 residential disclosure.

4 MR. SATO: Are you talking about the item in 1E?

5 THE WITNESS: Correct. It refers to "proposed
6 septic system management program in L." And then the
7 second page of that document in 2A, it refers to "State
8 agencies have imposed a requirement that a community sewer
9 system be constructed for portions of those areas." There
10 may be certain costs and advises contacting the Los Osos
11 Community Services District. It refers to the property
12 being in the Los Osos Waste Water Collection area and an
13 assessment has been issued on the property. Again,
14 advises to contact the CSD, that the buyers received a
15 copy of the assessment. And there is another box for,
16 "Seller shall provide buyer with a copy of the
17 assessment." So those are the references I see to the
18 sewer issue.

19 BY MR. SHIPE:

20 Q. But nothing that states that the home I am about
21 to purchase has illegal discharges?

22 A. Not in those terms, no. Not that I see from
23 this quick review.

24 Q. And you did notice that it does mention a
25 building moritorium?

1 A. Correct.

2 Q. Which goes to the second document. As well as
3 it says to contact Los Osos CCSD, correct?

4 A. Yes.

5 MR. SATO: Vague and compound question. Vague
6 and ambiguous.

7 BY MR. SHIPE:

8 Q. So the other documents, Los Osos Building
9 Moritorium Building Information Bulletin, have you seen
10 this document before?

11 A. I saw it when you faxed it to me.

12 Q. Is that the only time you've seen this document?

13 A. That could very well be.

14 Q. Has your agency approved this document?

15 A. Not that I know of.

16 Q. The document states -- or let me ask you. Does
17 the document notice that discharges within the prohibition
18 area are illegal?

19 MR. SATO: Objection. The document speaks for
20 itself.

21 THE WITNESS: The prohibition, to me, says that
22 the discharges are illegal, they are prohibited.

23 BY MR. SHIPE:

24 Q. Where do you see that prohibition says that
25 discharges are illegal?

1 A. I just told you what it says to me, the meaning
2 of prohibition.

3 Q. Where is the word prohibition that you are
4 referring to?

5 A. 1, "The area subject to the moratorium is known
6 as the prohibition area."

7 Q. "The provisions of the moratorium area do not
8 apply outside of the prohibition area."

9 A. Correct.

10 Q. If we go to the top of it, it states that on
11 Friday, January 8, 1988, the California Regional Water
12 Quality Control Board imposed a moratorium on the sources
13 of sewage discharge and increases in volume of existing
14 sources in the Community of Baywood/Los Osos."

15 Is that an accurate statement?

16 A. Well, we don't call it a moratorium. It's a
17 prohibition, so that part is inaccurate. But in terms of
18 the gist of it --

19 Q. So in 1988 --

20 A. Wait. Let me finish answering the question,
21 please.

22 Q. Okay.

23 A. In terms of the gist of it, that is correct.

24 Q. Let's get a little bit more into the gist. It
25 says that the Water Board imposed a moratorium on new

1 sources of sewerage discharge and increases in volume of
2 existing sources in the community of Baywood/Los Osos."

3 Was that the only thing that was imposed on that
4 date?

5 A. The -- actually, the discharge prohibition was
6 adopted in 1983 and was effectuated in terms of new
7 discharges in 1988. So the existing discharges were
8 prohibited in 1983.

9 Q. Is there anything within this document that
10 states the 1983?

11 MR. SATO: Objection. The document speaks for
12 itself.

13 THE WITNESS: I see the 1988 date. In the
14 interest of time, I will do a quick scan. I don't see a
15 1983 date referenced.

16 BY MR. SHIPE:

17 Q. Okay. The document states, "The moratorium was
18 imposed through the provision of a memorandum of
19 understanding executed between the County and the Regional
20 Water Quality Control Board in December of 1978."

21 Are you familiar with that memorandum of
22 understanding?

23 A. We have memoranda of understanding with
24 virtually all the counties in our region regarding septic
25 systems, and so I am familiar with them as a group.

1 MR. SHIPE: Okay.

2 (Deposition Exhibit No. 2 marked for

3 identification.)

4 BY MR. SHIPE:

5 Q. Is this the current Memorandum of Understanding

6 regarding septic discharges between the Regional Water

7 Quality Control Board and the County of San Luis Obispo?

8 A. Well, this is an unsigned version.

9 Q. Flip one more page.

10 A. I still don't see a signature on here. The page

11 that you are referring to, the copy of the Board of

12 Supervisors Proceedings indicates that the chair of the

13 County Board of Supervisors is instructed to sign. And it

14 looks like it's a 1978 document. It is what it is.

15 Q. So is it an accurate depiction of the memorandum

16 of understanding between your agency and the County?

17 A. I don't know if this is the actual current one

18 or not. It could be.

19 Q. Who would be responsible for knowing that

20 information?

21 A. Howard Kolb of our staff is currently working on

22 revisions to the Memorandum of Understanding with the

23 counties.

24 Q. In the new CDO documents, the prosecution went

25 to great lengths to defend the basin plan. Why are we not

1 allowed to refute that evidence?

2 MR. SATO: Objection; calls for a legal
3 conclusion.

4 THE WITNESS: According to the Water Code,
5 interested parties have a certain amount of time, 30 days,
6 after Regional Board action to petition the action of the
7 Regional Board. And the basic plan was adopted in 1983
8 and challenges were exhausted at that time.

9 BY MR. SHIPE:

10 Q. When was the 30-day requirement instituted?

11 MR. SATO: Objection; calls for a legal
12 conclusion.

13 THE WITNESS: It's typically based on the date
14 of the Regional Board action.

15 BY MR. SHIPE:

16 Q. When was the law enacted that allowed only 30
17 days to respond?

18 A. I don't know.

19 MR. SHIPE: Let's take a little break for a
20 second. He needs to change the videotape.

21 (Break taken.)

22 (Mr. Payne left the proceedings.)

23 MR. SHIPE: So we are back on the record.

24 Q. Why are you leaving on a sabbatical?

25 MR. SATO: Objection. Calls for description of

1 personal information.

2 But if you want to answer, you can.

3 THE WITNESS: It's for personal reasons.

4 BY MR. SHIPE:

5 Q. When was this decision made?

6 A. Well, I first brought it up ten years ago. I

7 put it off for a while and decided a year and a half ago.

8 Q. And is that when you submitted documentation

9 stating that you wanted to take this time off?

10 A. I don't think it's appropriate for me to respond

11 beyond the answer that I just gave.

12 Q. Did anyone suggest for you to take this leave?

13 I'm sorry. Did anyone from the Regional Water

14 Quality Control Board or the State Water Resources Control

15 Board suggest that you take this leave?

16 A. No.

17 Q. Did any employee of the State of California

18 suggest that you take this leave?

19 A. No.

20 MR. SATO: Objection; vague and ambiguous.

21 BY MR. SHIPE:

22 Q. When do you leave San Luis Obispo County?

23 A. I think that's a personal issue, so I choose not

24 to answer. It's personal. It doesn't have anything to do

25 with work.

1 MR. SATO: I will join in the objection. To the
2 extent that you want to ask him when his last day in the
3 office is or something like that, that would be
4 appropriate.
5 BY MR. SHIPE:
6 Q. When is your last day in the office?
7 A. Friday.
8 Q. Friday, October 6th?
9 A. Correct.
10 Q. And when do you return?
11 A. April.
12 Q. Do you have a return date?
13 A. It's six months.
14 Q. Regarding the pumping requirements in the
15 originally issued cease and desist orders, who decided on
16 those requirements?
17 A. At the time, I was heading the prosecution team,
18 so that would be me.
19 Q. Did anyone suggest that there may be air quality
20 issues prior to the Air Quality Control Board issuing its
21 statement?
22 A. I don't know when the District issued its
23 statement, so I don't know exactly when it first came up
24 as an issue versus the District's statement.
25 Q. We were notified the Monday prior to the hearing

1 that the issue, that the District had made its ruling. So
2 at any time prior to the evidence submission date that
3 defendants had to submit their evidence by, had anyone
4 spoke with you about possible air quality issues?

5 MR. SATO: Vague and ambiguous as to possible
6 air quality issues.

7 MR. SHIPE: Air quality issues regarding the
8 pumping program that you were recommending.

9 THE WITNESS: Again, we internally had
10 discussions about the issue. And I don't recall exactly
11 how that corresponds with the Air District. You are
12 talking about a letter from the Air District?

13 BY MR. SHIPE:

14 Q. No. I am saying has anyone besides the Air
15 District and besides your staff, did anyone else suggest
16 to you that there might be air quality issues with the
17 proposed pumping program?

18 A. It seems to me that one or more of the
19 designated parties brought up the issue in their -- I
20 guess it would be their responses to the individual cease
21 and desist orders.

22 Q. Did you consider those options or that
23 possibility?

24 A. Once it was brought up, yes.

25 Q. Did you -- or why did you decide not to do a

1 CEQA analysis?

2 A. I think that's a legal issue.

3 MR. SATO: Objection; calls for a legal
4 conclusion.

5 BY MR. SHIPE:

6 Q. Have you ever considered an on-site septic
7 management program as an interim action until the sewer is
8 built?

9 MR. SATO: Objection; vague and ambiguous as to
10 the term "on-site sewer septic management system."

11 THE WITNESS: I can answer. Yes.

12 BY MR. SHIPE:

13 Q. Do you support an on-site septic management
14 program for Los Osos, including the prohibition zone as an
15 interim measure?

16 A. It's important for the areas that are not to be
17 sewerred, and The Los Osos Community Services District has,
18 in years past, pursued establishment of an on-site
19 maintenance district for the areas that were not to be
20 sewerred. I don't recall if at that time they were
21 considering a maintenance district for the areas within
22 the prohibition zone. But I am pretty sure their main
23 thrust or perhaps their sole intent was for the areas
24 outside of the prohibition zone. You are asking as an
25 interim measure?

1 Q. Yes. Within the prohibition zone.

2 A. And it certainly wouldn't hurt to have good

3 septic system maintenance. In fact, that's what we're

4 proposing in the draft cease and desist orders in part is

5 to have -- this draft cease and desist order proposes an

6 initial inspection or a proof that the system has been

7 maintained within a reasonable period of time. And that's

8 consistent with an on-site maintenance district.

9 Q. You stated -- I believe you stated -- I believe

10 you said it was -- did you say '94 or just a few years

11 ago?

12 A. No, I didn't say '94.

13 Q. Okay. A few years ago that the Los Osos CSD

14 attempted to institute on-site septic management program.

15 Why were they unable to?

16 A. Well, again, this goes back a while. So my

17 recollection is that the District needed to have

18 legislation in order to have the authority to be an

19 on-site maintenance district. I believe that they asked

20 for then Assemblyman Maldonado to sponsor that

21 legislation. And again, if memory serves me correctly, I

22 believe he dropped that.

23 Q. And why did they need the legislation for

24 authority?

25 MR. SATO: Objection; calls for speculation.

1 Also assumes facts not in evidence and lack of foundation.

2 THE WITNESS: An on-site maintenance district

3 typically requires access to a septic system. And all the

4 septic systems, to my knowledge, are on private property.

5 So I believe it has to do with having the authority to go

6 on private property and perform the functions of a

7 district. I am not sure about that.

8 BY MR. SHIPE:

9 Q. Okay. Regarding the Blakeslee compromise that

10 the Los Osos CSD and the State Water Resources Control

11 Board attempted last November, did you contact anybody

12 with the State regarding that compromise?

13 MR. SATO: Objection with regard to the term

14 person with the State.

15 BY MR. SHIPE:

16 Q. State Water Resources Control Board.

17 A. When?

18 Q. Last November when -- during the time period

19 when the CSD was attempting to compromise.

20 A. During the time that they were attempting to

21 compromise, I believe I had conversations with State Board

22 people.

23 Q. Did those conversations include any Board

24 members?

25 A. Of the State Board, you mean?

1 Q. Yes.

2 A. I don't believe so.

3 Q. Did those conversations include Celeste Cantu?

4 A. Yes.

5 Q. What was your purpose for contacting Ms. Cantu?

6 A. I didn't say I contacted her. I believe that

7 issue came up in conversation. If I did say I contacted

8 her, I didn't mean to imply that I contacted her about the

9 issue.

10 Q. Did you give her any advice on the issue?

11 A. I don't think I gave her advice. I may have

12 answered some questions about -- well, that's really

13 getting into speculation, since I don't recall

14 specifically conversations.

15 Q. What are your requirements for a sewer system in

16 Los Osos?

17 A. Well, to be in compliance with the discharge

18 prohibition. So it means eliminating the individual

19 discharges from the systems that are within the

20 prohibition zone.

21 Do you mean for a treatment plant that will be

22 built?

23 Q. Yes.

24 A. Those are established in waste discharge

25 requirements and the Regional Board did adopt waste

1 discharge requirements for the District's proposed
2 project. So those established the requirements once the
3 treatment system is operating.

4 Q. Do those requirements change?

5 A. Not once they are adopted, unless the Board
6 changes those requirements. It's an action of the Board.

7 Q. And so once an action of the Board take place,
8 then the project would have to change to meet those new
9 requirements?

10 A. Say that again.

11 Q. If a project has been -- the waste discharge
12 requirements have been established.

13 A. Correct.

14 Q. If a project is under the way, under way, and
15 the waste discharge requirements are amended by the Board,
16 does the project then have to change to meet those new
17 waste discharge requirements?

18 MR. SATO: Objection; incomplete hypothetical.

19 THE WITNESS: Well, let me speak generally about
20 how it might work with permits of waste discharge
21 requirements. They are subject to renewal. And for
22 example, on a five-year basis. So when the waste
23 discharge requirements come up for renewal before the
24 Regional Board, it's very possible and likely that there
25 would be some changes in the waste discharge requirements,

1 as opposed to them just being reissued as is. There could
2 be changes in State law, State policy that have to be
3 implemented.

4 So to the extent that there are changes in the
5 waste discharges requirements adopted by the Board, then
6 it is up to the discharger to comply with them, to do what
7 it takes to comply with them.

8 BY MR. SHIPE:

9 Q. Regarding the Tri-W site, why did you approve
10 gravity-fed pipes inlaid through groundwater without
11 seismic or title considerations or with the use of
12 noncontinuous pipe?

13 A. What do you mean by "approve"?

14 Q. You approved the Tri-W -- your board gave
15 approval -- or first of all, who gave approval for the
16 Tri-W site? Was that you or was that a move of the Board?

17 MR. SATO: Objection; vague and ambiguous as to
18 the use of the term "approval" or "approve."

19 THE WITNESS: That is why I asked what you mean
20 by "approve," because I described the Board's action,
21 which is the waste discharge requirements. We regulate
22 the discharge from facilities. And it's up to the
23 discharger, in this case we are talking about the Los Osos
24 Community Services District, to build, propose a project,
25 build a project and to get the necessary approvals. There

1 are many approvals for a project of that type.

2 BY MR. SHIPE:

3 Q. And to get your approval, all they need is to

4 meet the waste discharge requirements?

5 A. Correct.

6 MR. SATO: Belated objection, again, in as far

7 as the use of the term "approval."

8 THE WITNESS: Yeah. Because we don't approve

9 the building of the project. So that's what I was trying

10 to say. Our sole jurisdiction, our regulation of the

11 facility is just the discharge from the facility through

12 the waste discharge requirements.

13 BY MR. SHIPE:

14 Q. Is that included even with the SRF loan?

15 A. Yes.

16 Q. So the SRF loan does not add any additional

17 stipulations to the project?

18 MR. SATO: Objection; lack of foundation.

19 THE WITNESS: When I said "yes," I mean we don't

20 have anything to do with the SRF, State Resolving Fund,

21 loan approval.

22 BY MR. SHIPE:

23 Q. Okay. Here is a copy of 8313. This is the same

24 thing. It just doesn't have the cover page on it and the

25 map on the back. I will not be asking any questions

1 regarding those.

2 (Deposition Exhibit No. 3 marked for

3 identification.)

4 BY MR. SHIPE:

5 Q. Before we go there, Tri-W was approved for

6 allowing 7 milligrams per liter nitrate in discharge,

7 correct?

8 A. Yes.

9 Q. Why is discharge from individuals illegal under

10 7 milligrams per liter?

11 A. Because the discharges are prohibited by the

12 basin plan, so they would not be in compliance with

13 discharge prohibition.

14 Q. But the discharge from the treatment plant was

15 within the prohibition zone as well?

16 A. Yeah. Actually, I am not sure all of the

17 discharges was within the prohibition zone.

18 Q. If you want to take a look at the map, it's on

19 the back.

20 Sorry. It's not on either of our copies.

21 A. I am not sure where the Brodersen site is. But

22 the point is --

23 Q. Brodersen is this area.

24 A. I wasn't sure if it was here or here.

25 But the point is that the basin plan has a

1 prohibition against individual sewage system discharges
2 within the prohibition zone, as opposed to individual
3 treatment systems that might be able to meet a lower
4 nitrogen limit.

5 Q. If you turn to page 4, Item No. 8.

6 MR. SATO: Are we on Exhibit 3.

7 MR. SHIPE: I'm sorry. Was that Exhibit 3?

8 MR. SATO: Yes.

9 MR. SHIPE: Yes.

10 Q. Under Item No. 8, it states, "Discharge of waste
11 from individual and community sewage disposal systems are
12 prohibited."

13 A. Uh-huh.

14 Q. So it's not just individual systems that are
15 prohibited?

16 A. This is referring to the Vista De Oro, a small
17 community system that exist within the prohibition zone
18 which have septic systems.

19 Q. So a large community sewage disposal system is
20 different than a community sewage disposal system?

21 A. The solution for this prohibition was subject to
22 the approval of Regional Board with the waste discharge
23 requirements for the proposed community system.

24 Q. So the Regional Board approved of discharge
25 within the prohibition zone from the community sewer

1 system?

2 A. For the proposed plant, proposed by the

3 Community Services District, yes.

4 Q. The next item on that page states, "Be it

5 further resolved that the above area is consistent with

6 the recommendations of the staff report." In other words,

7 the area of the prohibition zone is consistent with the

8 recommendations of the staff report?

9 A. Yes, I see that.

10 Q. Okay.

11 MR. SATO: Before you go, Mr. Shipe, is there

12 Attachment A part of this exhibit?

13 MR. SHIPE: It's on this, but it's not on my

14 copy or your copy.

15 MR. SATO: But it is attached to it.

16 MR. SHIPE: Yes, to that document. That's it

17 right there. It's this map.

18 MR. SATO: The map is the staff report.

19 MR. SHIPE: I'm sorry. The staff report is not.

20 The attachment A is our map.

21 MR. SATO: Got it. Okay. Thank you. I

22 appreciate it.

23 MR. SHIPE: Okay.

24 Q. Was that always the recommendations of the staff

25 report?

1 MR. SATO: Objection; invades the deliberative
2 process privilege, and instruct the witness not to answer.
3 To the extent these are draft reports. If they are a
4 final report, then he can.

5 And Counsel, let me interpose another objection.
6 I don't think questions about Resolution 8313 is
7 reasonably calculated to lead to the discovery of
8 admissible evidence. So I don't make this objection to
9 each question you ask about this resolution, I'd like an
10 agreement that I would like a standing objection to any
11 questions related to the resolution No. 8313. Would that
12 be acceptable or do you want me to make the objection?

13 MR. SHIPE: And Chairman Young will decide
14 whether or not --

15 MR. SATO: On an individual basis, yes.

16 MR. SHIPE: So we are agreed.

17 MR. SATO: Thank you.

18 BY MR. SHIPE:

19 Q. Were there any previous final staff reports that
20 suggested some other area -- that recommended some other
21 area to be the prohibition zone?

22 MR. SATO: Any final staff reports?

23 THE WITNESS: So previously you said you
24 instructed me not to answer.

25 MR. SATO: If they are draft reports. If there

1 are final reports, you can answer.

2 THE WITNESS: Okay. As I recall, there was a
3 change regarding Cabrillo Estates between the -- in the
4 period of time when the draft staff report was out for
5 comment and responses to -- if I remember right, I believe
6 there was a recommended change in response to comments
7 regarding Cabrillo Estates. And so that was part of the
8 -- that was part of the documents that went to the
9 Regional Board. I don't know -- I don't recall other
10 changes in boundaries.

11 BY MR. SHIPE:

12 Q. And are those documents on file at the Regional
13 Water Quality Control Board?

14 A. I think that would be included in the documents
15 that we provided today -- staff, the staff report
16 associated with 8313.

17 MR. BISHOP: Can I just clarify what the two of
18 you are talking about and make sure I understand it.

19 Rob is asking you if you were aware of the --
20 basically, the boundary lines that were drawn for the
21 prohibition zone on the staff report, compared to what was
22 actually submitted by the Board, what was approved by the
23 Board?

24 THE WITNESS: What I was trying to say is that
25 part of a staff report was everything that was presented

1 to the Regional Board at the hearing. And that included
2 comments that were received on a previous draft staff
3 report. It's our normal process. And responses to
4 comments.

5 MR. BISHOP: Did you say you brought those
6 documents with you.

7 THE WITNESS: Yes.

8 So to clarify, my recollection is that we had
9 comments regarding -- I hope I got the right term here,
10 Cabrillo Estates.

11 BY MR. SHIPE:

12 Q. Yes, I believe that's correct.

13 A. And so we had responses to comments with a
14 recommended change in the boundaries to exclude Cabrillo
15 Estates from the prohibition zone boundary. And that
16 recommendation was part of what the -- that was included
17 in the Regional Board's action as far as the final
18 boundaries. So it was part of the staff reports. And the
19 staff report to the Board includes the draft staff report,
20 the comments and the responses to comments and any changes
21 and recommendations. That's all part of the staff report
22 to the Board.

23 MR. BISHOP: Is that the staff report that was
24 submitted in the prosecution document list?

25 THE WITNESS: Yes, I believe it is.

1 BY MR. SHIPE:

2 Q. Was it in the original prosecution document

3 list?

4 A. That I don't know. I believe it was.

5 MR. SATO: I just want to note for the record

6 that Mr. Payne is not here. And I believe he hasn't been

7 here since the commencement of this session of the

8 deposition.

9 MR. SHIPE: Okay. That technically ends the

10 questions -- or no. I have one more on 8313.

11 Q. When was 8313 issued and who was it sent to?

12 MR. SATO: Objection; lack of foundation. Vague

13 and ambiguous as to the use of the term "issued."

14 MR. SHIPE: Enacted.

15 THE WITNESS: The Regional Board adopted 8313 on

16 September 16, 1983, according to the document.

17 BY MR. SHIPE:

18 Q. And who was notified regarding its enactment?

19 MR. SATO: Objection; lack of foundation.

20 THE WITNESS: I can't tell you.

21 BY MR. SHIPE:

22 Q. Was it sent to the County? Was it sent to

23 individuals?

24 A. I can just tell you that the normal procedure

25 would be to send it to the interested parties list that we

1 had for the item. As far as exactly how this one was
2 handled, I have no reason to believe it was handled any
3 differently.

4 Q. After 8313, 1100 homes were allowed to be built
5 within the prohibition zone; is that correct?

6 A. No.

7 Q. How many homes were allowed?

8 A. Page 4 says that "Discharges from individual or
9 community systems within the prohibition area in excess of
10 an additional 1150 housing units or equivalent are
11 prohibited, commencing with the date of State Water
12 Recourses Control Board approval."

13 Q. So are you saying 1150 homes were built?

14 A. No. I don't know how many were built.

15 Q. Okay. But there were homes that were built
16 after the establishment of the prohibition zone?

17 A. Yes.

18 Q. Will those homes that were allowed to be built
19 receive cease and desist orders as well?

20 A. I don't know.

21 Q. Is it your intention to prosecute them with
22 cease and desist orders?

23 A. There are other options in terms of how
24 prosecution team proceeds, as I have already mentioned in
25 this deposition.

1 Q. If you succeed in issuing cease and desist
2 orders to the initial 45, do you intend to continue
3 issuing cease and desist orders?

4 MR. SATO: Objection to the extent that it calls
5 for disclosure of attorney-client communications. I
6 direct the witness not to answer.

7 But if you have any independent basis for
8 responding, please do so.

9 THE WITNESS: I have already indicated that we
10 intend to proceed with enforcement actions against
11 individuals throughout the prohibition area, so that's my
12 answer.

13 BY MR. SHIPE:

14 Q. When did the Water Board first decide that
15 Los Osos needed a sewer?

16 A. The action of a Regional Board was in 8313,
17 which was in 1983. The interim basin plan, which goes
18 back to probably '71, it's my understanding, had a
19 prohibition of discharge for Los Osos. And I am not sure
20 exactly how that was administered. The County proposed a
21 monitoring program, I believe. And I think that was in
22 lieu of the prohibition, to monitor some more, but the --
23 and I am not sure of the approval process of that interim
24 basin plan. That was before my time. But it is -- my
25 assumption is that in some fashion came before the Board.

1 Q. Okay. Have you established communication with
2 the other homes within the prohibition zone that have not
3 been contacted with cease and desist orders at this time?
4 A. Through the process that I already talked about
5 earlier, yes.
6 Q. But no contact since issuing -- since attempting
7 to issue the cease and desist orders?
8 A. I don't believe so.
9 Q. After K98, the resolution passed by Los Osos
10 voters establishing CSD, the Los Osos Community Services
11 District started to work on ponds, a ponding system. My
12 understanding is that you had stated in advance that that
13 was not going to meet the requirements; is that correct?
14 A. Not that I'm aware of. What do you mean "in
15 advance"?
16 Q. Newspaper reports that the ponding system would
17 not -- or maybe it wasn't the waste discharge
18 requirements. Maybe it was the fact that they were going
19 to sewer the entire prohibition zone.
20 MR. SATO: Objection. Vague and ambiguous.
21 Compound.
22 THE WITNESS: Okay. Do you want to ask it
23 again?
24 MR. SHIPE: Okay.
25 Q. I have read newspaper reports recently that show

1 prior to the election for K98, that you have made
2 statements that the solution's group solution would not be
3 acceptable in fulfilling the requirements.

4 A. Okay.

5 MR. SATO: Wait. There is no question.

6 BY MR. SHIPE:

7 Q. I mean, is that correct?

8 A. Okay. We had discussions with the solutions
9 group, and then subsequently with a Community Services
10 District, once the District was established, regarding
11 various options that various parties, including District
12 board members, were considering. And we had concerns
13 about certain combination of collection and treatment
14 specifically. We had concerns about a step system, a
15 septic tank effluent pumping system or a STAG system,
16 septic tank effluent gravity system, in conjunction with
17 ponds, where we thought that there was a strong potential
18 for odors with such a setup. And so we had discussions
19 with the solutions group because it seems to me that was
20 part of their idea prior to the election.

21 And then subsequently when the District was
22 form, we provided comments that included that concern,
23 among several other concerns, in a letter to the District.
24 And that's what we do when there is a facilities plan is
25 provide comments on the plan, hopefully for the benefit of

1 the decisionmakers in terms of their taking into
2 consideration everyone's concerns and hopefully coming up
3 about the right decision. So, yes, we had discussions.
4 We had a formal letter with comments.

5 Q. How does AB2071 affect cease and desist orders?

6 A. Can I back up to your previous question?

7 Q. Sure.

8 A. I mentioned the odor concern, but I realize I
9 didn't fully answer your question. Because didn't you ask
10 about meeting the requirements?

11 Q. Yes.

12 A. Another concern we had, and you specifically
13 mentioned ponds. We were concerned that the pond
14 configuration that was on the table would not be able to
15 meet the draft waste discharge requirements that we had at
16 the time, vis-a-vis the 7 milligrams per liter of
17 nitrogen.

18 Q. So those draft waste discharge requirements had
19 not been adopted at that point?

20 A. Correct.

21 Q. Did the draft waste discharge requirements
22 change?

23 A. I believe we had 7 milligrams per liter in the
24 draft, and that was in the adopted.

25 Q. Was there any other waste discharge requirements

1 that were associated with this?

2 A. No, I don't believe so.

3 Q. So nitrate or nitrogen was the only --

4 A. Oh, are there other limitations?

5 Q. Yes.

6 A. Oh, yes. I thought you meant other waste

7 discharge requirement orders.

8 Q. Yeah. Did any of those other requirement orders

9 change?

10 A. I would guess there were probably some changes.

11 I don't know that there were any that were significant in

12 terms of overall ability of the system to meet effluent

13 limitations. I don't recall any significant issues other

14 than the nitrogen.

15 Q. Okay. Will AB2701 affect the issuance of CDOs?

16 MR. SATO: Objection; calls for a legal

17 conclusion.

18 THE WITNESS: That's Blakeslee's bill.

19 BY MR. SHIPE:

20 Q. Yes.

21 A. I don't believe so. Well, that's not fair for

22 me to say because I don't issue cease and desist orders.

23 And that was your question, right? Issuance.

24 Q. Right.

25 A. That's a Regional Board decision.

1 Q. Will it affect the prosecution -- I mean, your
2 decision to prosecute cease and desist orders?

3 A. No.

4 MR. SATO: It calls for speculation. You may
5 ask him about whether it has.

6 BY MR. SHIPE:

7 Q. Okay. Has it affected your --

8 A. No.

9 Q. Did you recommend approval of the SRF loan for
10 the Tri-W site?

11 A. We were in favor of the State Board providing
12 funding for the community. It's not up to us to approve
13 the loan. "Us" being the Regional Board.

14 Q. Did you recommend issuance of the loan?

15 A. I think that's the same answer.

16 Q. Okay. So did you have any influence on issuing
17 at the time that the monies were actually issued?

18 MR. SATO: Objection; calls for speculation.
19 Lack of foundation.

20 THE WITNESS: Well, we were pretty firmly on
21 record through multiple letters, memos, that the District
22 would need to have -- and the County before it -- would
23 really be assisted by having a low interest loan through
24 the State Revolving Fund loan. Now, to what degree that
25 affected the State Board's process of approval, I couldn't

1 tell you. You would have to ask them.

2 BY MR. SHIPE:

3 Q. Okay. Did you make any recommendations for them

4 to disburse any funds within 60 days prior of those funds

5 being disbursed?

6 A. I don't believe so.

7 Q. Did you make any recommendation to delay

8 disbursing those funds due to the recall effort that was

9 underway?

10 A. I don't believe so.

11 Q. Could the SRF loan have been delayed until after

12 the elections?

13 MR. SATO: Objection; lack of foundation. Calls

14 for speculation.

15 THE WITNESS: I don't know what you mean by the

16 loan being delayed. What does that mean?

17 BY MR. SHIPE:

18 Q. The issue of the disbursing of funds, could the

19 disbursing of funds have been delayed until after the

20 election?

21 MR. SATO: Objection; calls for speculation.

22 Lack of foundation. Vague and ambiguous.

23 MR. SHIPE: Let me rephrase it.

24 Q. Did you have any influence in or -- let me

25 scratch that.

1 Could you have had any influence in delaying the
2 disbursal of funds until after the election?

3 A. I think what would have caused delay -- this is
4 a contract agreement between the State Board and the
5 District. So once the loan was approved, then I think
6 what could have caused delay is if there was some
7 nonperformance, something that was contrary to the terms
8 of that agreement, so we are not involved with that.

9 Q. Have you made any effort to assist cooperative
10 dischargers in achieving compliance?

11 MR. SATO: Objection; vague and ambiguous.

12 THE WITNESS: Individual dischargers?

13 BY MR. SHIPE:

14 Q. Yeah. Your staff is currently prosecuting 45
15 individuals. Have you made any effort to assist any
16 cooperative dischargers in achieving compliance?

17 MR. SATO: Same objection. Vague and ambiguous.
18 Misuse of the term "assist."

19 THE WITNESS: My understanding is that you,
20 yourself, have had some conversations, perhaps meeting
21 with Harvey Packard and others on the staff, regarding
22 some interim measures. So I can't speak for how those
23 meetings went, but that might be an example of trying to
24 assist.

25 /

1 BY MR. SHIPE:

2 Q. In our conversation, did you make any effort to

3 assist in helping me to achieve a compliance?

4 A. I think the --

5 MR. SATO: I'm sorry. Objection; vague and

6 ambiguous as to the use of the term "assist."

7 MR. SHIPE: I feel comfortable with the word

8 assist.

9 MR. SATO: I understand, but I am not sure I

10 understand or it will be clear on the record as to what

11 you are --

12 MR. SHIPE: I will be sure and clarify.

13 THE WITNESS: I think the principal means of

14 obtaining compliance is through project, a community-based

15 project, so we have certainly encouraged individuals to

16 try to do what they can to come up with a solution. And

17 that could be through encouragement of their elected folks

18 to come up about a project that will assist them in coming

19 into compliance with the discharge prohibition.

20 BY MR. SHIPE:

21 Q. Have you made any attempt to distinguish the

22 difference between cooperative dischargers and

23 recalcitrant violators?

24 MR. SATO: Objection; vague and ambiguous.

25 Maybe you could define for Mr. Briggs what you mean by

1 "cooperative dischargers" versus "recalcitrant folks."
2 MR. SHIPE: No. I would rather not right now.
3 MR. SATO: Okay. Objection; vague and
4 ambiguous.
5 THE WITNESS: Have we made some distinction?
6 BY MR. SHIPE:
7 Q. Have you attempted to make any distinction
8 between cooperative dischargers versus recalcitrant
9 violators?
10 MR. SATO: Same objection.
11 THE WITNESS: It's very difficult to, and we
12 can't know what the motive of individuals are. All we can
13 do is respond to what they actually do and what they are
14 actually doing. And so it's pretty tough to make a
15 distinction between what someone might be thinking in
16 terms of whether they are attempting to be recalcitrant or
17 whether they are truly being cooperative.
18 BY MR. SHIPE:
19 Q. How do you define "cooperative dischargers"?
20 A. I would say that is someone who is making a
21 good-faith effort to be in compliance with their
22 requirements.
23 Q. And how would you define a "recalcitrant
24 violator"?
25 A. Well, it can be pretty clear when someone -- now

1 I am speaking generically as far as dischargers.

2 Q. Okay.

3 A. And it can be fairly clear in some cases when
4 someone is nonresponsive to tasks that they are required
5 to do, if they are inter-milestones and that sort of
6 thing. If they fail to submit the reports that we are
7 required to submit. If they haven't taken physical
8 actions to abate dischargers, where they have some control
9 over it. So those are all examples where it's fairly
10 obvious that someone is recalcitrant.

11 Q. What about in this situation regarding cease and
12 desist orders on individuals or the orders in the
13 prohibition zone?

14 A. I think in this case it's more difficult
15 because, as I said, the method for complying with a
16 prohibition would be to have a system that allowed the
17 dischargers to hook up to the system and to eliminate
18 their individual system. And the method that has been
19 attempted in the past has been for the County to propose a
20 project to do that, for the Community Services District to
21 propose a project to do that. And now, apparently, it's
22 going back to the County. So it's again, it's difficult
23 for us to say what someone's individual actions have been
24 in terms of whether they would fall into the category that
25 you are asking about in terms of whether they would be a

1 recalcitrant discharger or a cooperative discharger.

2 Q. Are there any other requirements imposed on
3 individual dischargers within the prohibition zone besides
4 8313 discharge prohibition?

5 A. I mentioned the individual orders for a small
6 group of people earlier in response to your question. And
7 then there are waste discharge requirements and cease and
8 desist orders for other groups of dischargers within the
9 prohibition zone. There is Vista de Oro.

10 Q. Specifically, are there any other requirements
11 -- once a sewer is built, will that relieve me of all
12 requirements that I have with the Regional Water Quality
13 Control Board?

14 A. As long as you don't put in another -- assuming
15 you connect to the sewer system, connect to the sewer
16 system, abandon your discharge and as long as you don't
17 put in another septic system and discharge, then you would
18 be in compliance with the prohibition.

19 Q. Would I be in compliance with all mandates of
20 the Regional Water Quality Control Board?

21 MR. SATO: Objection; calls for a legal
22 conclusion.

23 THE WITNESS: That's a pretty broad question.
24 Let me just point out, for example, that there are new
25 programs that come along. One that comes to mind is the

1 storm water program. Which currently, as far as you as an
2 individual, you are within a broader community, and it's
3 typical or the way the program is now, individual areas
4 have storm water management plans. And there could be
5 some individual requirements associated with that as far
6 as storm water quality. So it's a very broad question,
7 and things could change in the future.

8 Q. Is an on-site septic management program required
9 at this time?

10 A. I think there is reference to an on-site system
11 program in 8313, if I remember right. And as we've
12 already talked about, the District did pursue an on-site
13 maintenance district for the areas that are outside of the
14 prohibition zone. Actually, there are a couple other
15 areas that were to be included in the maintenance district
16 that are inside the prohibition zone. I forgot about
17 those when I answered earlier. Those are the Martin tract
18 and Bayview Heights tract, which were taken up by the
19 Regional Board subsequent to 8313 and allowed to continue
20 on septic system, primarily because of the much lower
21 density, larger lots in those areas.

22 Did that answer your question?

23 Q. Basically.

24 A. Okay.

25 Q. I was given a document late last night that

1 referenced a February 7th, 2003, Regional Water Quality
2 Control Board order, No. R3-2003-007, that established the
3 waste discharge and recycled water requirements for the
4 district's waste water treatment facility. Section 7 of
5 that order stated that, "the District shall develop and
6 implement an on-site waste water management program no
7 later than January 1, 2004, to assure ongoing operations,
8 maintenance and monitoring of on-site disposal systems for
9 the unsewered areas of the Community of Los Osos, the
10 on-site Waste Water Management zone."

11 Currently, am I in an area that is unsewered?

12 MR. SATO: Let me say that I object to the
13 reference to this document that has not been produced or
14 shown to Mr. Briggs. So to the extent that that's simply
15 testimony by Mr. Shipe, then it's testimony by Mr. Shipe.

16 MR. SHIPE: At this point, yes.

17 Q. If you would like, you can read it too.

18 A. Well, those are the waste discharge requirements
19 for the District's proposed discharge.

20 Can I take a look at this?

21 Q. I am not looking to submit it as evidence. It
22 is just something that was kind of handed to me and I
23 found it interesting. And I would like to get a copy of
24 that eventually, but I mean, that's not something I am
25 pushing here.

1 A. Okay. Well, the paragraph above this refers to
2 the waste discharge requirements for the waste water
3 treatment facility, so that's the order that we have been
4 talking about.

5 Q. Okay.

6 A. And this is referring to the unsewered areas, so
7 I think the way you would read this is that that is
8 consistent with what I was just talking about as far as
9 the areas that are not to be sewered. Because, remember
10 the waste discharge requirements were based on the
11 application, the reported waste water discharge, filed by
12 the Los Osos Community Services District, to sewer --
13 which included -- there is no sense in having a treatment
14 plant unless there are sewers. So that included sewerage
15 the areas within the prohibition zone, excluding the areas
16 that I just mentioned. And this is -- I am pretty sure
17 this is referring to the remaining unsewered areas.

18 Q. Okay. Now, those waste discharge requirements
19 were approved, correct?

20 A. Yes.

21 Q. So would that resolution be currently in effect
22 even though the plant is no longer being pursued?

23 A. The resolution?

24 Q. The resolution of those waste discharge
25 requirements.

1 A. You mean the order adopted by the Board?

2 Q. Yes. Thank you.

3 A. Well, it's --

4 MR. SATO: Objection; calls for legal
5 conclusion.

6 THE WITNESS: The order stands. But to the
7 extent that the District is not discharging, of course,
8 it's not applicable as far as that goes.

9 BY MR. SHIPE:

10 Q. The whole -- when one part is eliminated, the
11 rest is or is not eliminated?

12 MR. SATO: Objection; vague and ambiguous.
13 Calls for a legal conclusion.

14 THE WITNESS: The order stands.

15 BY MR. SHIPE:

16 Q. Okay.

17 A. It hasn't been rescinded.

18 Q. Okay. In your prosecution of individuals and
19 within available resources, have you made any attempt to
20 target dischargers with the highest priority violations?

21 MR. SATO: Objection; vague and ambiguous as to
22 the term "highest priority violations."

23 MR. SHIPE: I feel comfortable with the term.

24 Q. Let me ask you this. How do you define "highest
25 priority violations"?

1 A. I didn't say that we did.

2 Q. I am asking you, how do you define "highest
3 priority violations"?

4 MR. SATO: Objection; calls for speculation.

5 THE WITNESS: The Regional Board decided all the
6 systems within the discharge prohibition zone, subject to
7 the subsequent refinement that I just mentioned, need to
8 be stopped. And so there wasn't any distinction made
9 between different systems from site to site.

10 BY MR. SHIPE:

11 Q. If you succeed in issuing cease and desist
12 orders to this initial 45, do you intend to submit
13 informal enforcement to the rest of the prohibition zone?

14 MR. SATO: Objection; vague and ambiguous as to
15 the use of the term "informal enforcement."

16 THE WITNESS: I can't tell you.

17 BY MR. SHIPE:

18 Q. So have you had any discussions with your staff
19 regarding that?

20 A. It seems to me that that would be part of the
21 deliberative process.

22 MR. SHIPE: How are we doing on time?

23 THE VIDEOGRAPHER: We have four minutes left on
24 this tape.

25 MR. SHIPE: Do you want to take a break at this

1 time?

2 MR. SATO: Sure.

3 THE VIDEOGRAPHER: We are going to call it quits
4 for now.

5 (Break taken.)

6 THE VIDEOGRAPHER: We are rolling.

7 THE WITNESS: May I clarify a previous answer?

8 BY MR. SHIPE:

9 Q. Regarding?

10 A. The last subject we are talking about, the
11 on-site maintenance business. I will clarify it anyway.

12 Q. Go ahead.

13 A. We were talking about the on-site maintenance
14 reference, which is apparently in the waste discharge
15 requirements. I said I thought there was some reference
16 to the areas outside the area to be sewered in 8313. And
17 I see there is a reference to continuing the monitoring
18 program for areas outside the prohibition boundaries, but
19 within the urban reserve line. I think that's what I was
20 recalling as far as that goes. I just wanted to clarify
21 that.

22 Q. Okay. Well, on that clarification. Is there
23 monitoring currently being done in those areas outside of
24 the prohibition zone?

25 A. I believe the monitoring program does include

1 areas outside the prohibition zone.

2 Q. Are you aware of any high nitrate readings
3 outside of the prohibition zone?

4 A. We provided the contour maps of nitrate
5 concentrations.

6 Q. That map does not include any areas -- I mean,
7 it includes the edges of some areas outside the
8 prohibition zone. But Cabrillo Estates is not on that
9 map, nor is the area out on Los Osos Valley Road heading
10 out of town.

11 A. Yeah. I thought that there might be a well or
12 two outside the prohibition area, but I am not sure about
13 that.

14 Q. But 8013 required for those wells to be
15 monitored as well or for wells in those areas to be
16 monitored as well?

17 A. It says the monitoring program which covers
18 areas outside the prohibition boundaries but within the
19 urban reserve line.

20 Q. So those areas are supposed to be monitored at
21 this time?

22 MR. SATO: Objection. The document speaks for
23 itself.

24 THE WITNESS: Yeah. Again, I can't say exactly
25 where wells are located, as far as the urban reserve line

1 versus the prohibition boundaries. Those lines are
2 coincident in a lot of areas.

3 BY MR. SHIPE:

4 Q. Not very many areas. Pretty much the coastline
5 and --

6 A. Oh, I am thinking of the urban services line.

7 Q. Yeah. The urban service line and the
8 prohibition zone pretty much only meet along the --

9 A. Well, you are not testifying here.

10 Q. Okay. How much time have you personally spent
11 on this issue, specifically the enforcement of cease and
12 desist orders on individuals in Los Osos?

13 A. Since when?

14 Q. Since you began the process of instituting them.

15 A. So are you talking about going back to
16 October --

17 Q. If that's when you decided to started
18 instituting them.

19 A. -- 2005.

20 Well, I referred to the fact that the letter
21 from 2005 said that we would be proceeding with individual
22 enforcement actions. And so I spent more time on it prior
23 to the hearings earlier this year and substantially less
24 time since then, as I have already indicated. Are you
25 looking for a percentage of time.

1 Q. Number -- percentage of time per week or just an
2 average number of hours that's spent.

3 A. It's real variable depending on where we were in
4 the cycle of, you know, when we had documents that were
5 due.

6 Q. In October of 2005?

7 A. I don't know. It would really be a wild
8 guess --

9 Q. Okay.

10 A. -- to say, but I will take a wild guess.

11 MR. SATO: You shouldn't guess.

12 THE WITNESS: Okay.

13 BY MR. SHIPE:

14 Q. Percentage of hours per week spent during that
15 time or the percentage of work that you did for the Water
16 Board, how much of that was designated to issuance of
17 cease and desist orders?

18 A. It seems like that is the same question.

19 Q. Okay. Of the documents submitted by the
20 defendants in this case, have you read all of them?

21 A. I read all the documents that were submitted in
22 the first round -- for the first round of hearings, not
23 subsequently.

24 Q. How long did that take you to read those
25 documents?

1 A. I don't know. I think we had on the order of 30
2 responses, and an average per might be 10, 15 minutes.
3 Some of them were pretty short. Some were longer, so
4 pretty variable.

5 Q. Do you document the time that you spend on each
6 issue with the Regional Water Board?

7 A. No, I don't.

8 Q. If cease and desist orders are issued and they
9 eventually turn into fines, will the fines start for the
10 original 45 defendants at that time? I'm sorry. Scratch
11 that. Let me rephrase that.

12 If cease and desist orders are issued to some
13 homeowners within the prohibition zone but not all, will
14 you go to fines on any homeowner prior to going -- looking
15 for fines for all homeowners?

16 A. I don't know.

17 MR. SATO: Objection; calls for speculation.
18 Calls for a legal conclusion.

19 THE WITNESS: Were you asking if penalties might
20 be imposed against individuals prior to being imposed
21 against other individuals?

22 BY MR. SHIPE:

23 Q. Yes.

24 A. Akin to the cease and desist orders?

25 Q. Yes.

1 MR. SATO: Same objection.

2 THE WITNESS: I think there could be a

3 difference between when an action is taken versus, say,

4 the fairness factor in terms of the amount of potential

5 penalties, if you follow me.

6 BY MR. SHIPE:

7 Q. If I follow, I think what you saying is that

8 even though -- you may proceed with fines before all have

9 been issued. Once all have been issued, everybody will

10 receive the same fine?

11 A. I will just say that I would think that it would

12 make sense to have everyone in the same boat as far as

13 potential penalties go, and that it would make since to

14 equalize that.

15 Q. And who decides when penalties go into effect?

16 A. It's up to the Regional Board to adopt any

17 penalties.

18 Q. And who would decide when to bring that issue

19 before the Board?

20 A. That would be Harvey Packard, the prosecution

21 team lead.

22 Q. And will that include Harvey even after you

23 return? In other words will Harvey be the person making

24 those decisions after you return?

25 MR. SATO: Objection; calls for speculation.

1 THE WITNESS: Yeah. That is a lot of
2 speculation.
3 BY MR. SHIPE:
4 Q. Do you intend to take back the position of
5 supervisor of the prosecution staff on your return?
6 A. No. I haven't been the lead for quite some
7 time, so it's independent.
8 Q. My understanding was that you gave up the lead
9 because you were leaving.
10 A. No.
11 Q. Okay.
12 A. It's independent.
13 Q. Okay. But you are still part of the prosecution
14 team?
15 A. I have already answered that question.
16 Q. Let's talk a little bit about alternatives to
17 CDOs. What would be the procedure for recommending
18 alternatives from defendants?
19 A. The procedure -- oh. The procedure for the
20 parties, yourself?
21 Q. Yes.
22 A. To talk to Harvey Packard.
23 Q. Well --
24 A. And of course, the Board itself, through
25 comments to the Board.

1 Q. Yes. Will Harvey have the final decision on
2 whether or not to go forward with the prosecution of cease
3 and desist orders?
4 A. What do you mean going forward with the
5 prosecution?
6 Q. If an alternative --
7 A. Now, you mean?
8 Q. Yes. If an alternative is submitted to Harvey
9 prior to the hearing, does he have the ability to stop
10 this process and enact and bring new enforcement measures?
11 MR. SATO: Objection; vague and ambiguous.
12 MR. SHIPE: That was my attempt to define it for
13 him.
14 THE WITNESS: The prosecution team makes the
15 recommendation in terms of what kind of an action to bring
16 forward. So to that extent, it's up to the lead of the
17 prosecution team.
18 MR. SHIPE: Do you have questions?
19 MR. BISHOP: Oh, I have lots of questions. You
20 can always come back.
21 MR. SHIPE: Yeah, I will come back.
22 MR. SATO: You should identify yourself for the
23 record.
24 MR. BISHOP: I am now Larry Bishop speaking on
25 behalf of myself here.

1 EXAMINATION

2 BY MR. BISHOP:

3 Q. Harvey, Matt and Allison, do they report
4 directly to you?

5 A. No.

6 Q. Did they report directly to you before?

7 A. No.

8 Q. Okay. Are they in your line of command at all?

9 A. Everyone at the Regional Board staff is.

10 Q. Okay. So you are familiar with those three
11 people and that they've been working on this case, and
12 they should be quite familiar with this as well, correct?
13 They've been your lead staff people?

14 A. Well, actually, Sorrel Marks was the lead staff
15 person for the most time in the last couple of decades.

16 Q. So those three people work for Sorrel Marks?

17 A. No. Sorrel Marks is a line staff, as are
18 Allison and Matt Thompson. I am just saying that Sorrel
19 Marks was the primary staff person for Los Osos issue over
20 the last -- I don't know how long. At least 15 years.

21 Q. Okay. In the original case, I had asked for
22 certain subpoenas. And I had asked who the primary person
23 was that was associated with Los Osos. And the answer
24 came back as that couldn't be identified because I didn't
25 give a name. So you are saying that Sorrel Marks --

1 A. No. That's what I said in terms of the past.

2 Q. For the past?

3 A. And now Allison Mulholland and Matt Thompson are

4 the two primary line staff. Harvey Packard is the

5 prosecution team lead and -- let me think. He supervises

6 both of them.

7 Q. Okay. You signed the original CDO that was sent

8 out back in January 28, I think it was.

9 A. I don't sign the cease and desist orders.

10 Q. You signed the document saying that it was being

11 issued, and it was issued under your --

12 A. The proposed.

13 Q. The proposed came under your name?

14 A. The proposed cease and desist orders.

15 Q. You were aware of what was in that document and

16 what was being associated with that document?

17 A. Correct.

18 Q. Did you read the documents that were associated

19 with the document list provided on that case?

20 A. As far as our documents?

21 Q. Yes. I know you've read those in the past, but

22 did you reread them when you were going --

23 A. No, not necessarily all of them. Some of them,

24 I did.

25 Q. Okay.

1 MR. SHIPE: Can I step in real quick.

2 The documents that you said you would bring with

3 you. Can I have a copy of those at this time.

4 MR. SATO: Sure.

5 Let me state for the record that we are

6 producing these documents to Mr. Shipe. I believe that

7 those green tags on there correspond to the index that is

8 on the staff report.

9 MR. SHIPE: Yes.

10 THE WITNESS: There is a -- there is a list

11 there and there are checkmarks.

12 MR. SHIPE: With the ones that are included?

13 THE WITNESS: Correct.

14 BY MR. BISHOP:

15 Q. So that's only the documents that you brought?

16 The reason that I ask that is back after I got the notice,

17 my wife and I went and sat down and read all the

18 documents, which took us a week. And the documents raised

19 more questions about your case than supported it, which

20 was kind of confusing to me why you would enter all those

21 documents into the case.

22 At that time, Matt Thompson came down, and I

23 asked him a question that if 7 milligrams was acceptable

24 for the plant, what would be acceptable for us to meet the

25 same requirements. And in the morning, he said 7

1 milligrams per liter was an acceptable alternative for me.
2 Later on that day, he came down with Allison, and he said
3 3 milligrams per liter. And at a later meeting with him,
4 I asked him if I got it down to zero with no E-coli, would
5 that fit the standards. And his answer, no, because I was
6 -- that I was having water come out of my septic tank.

7 Now, is water being part of 8313 a pollutant or
8 the discharge of water, is that prohibited?

9 MR. SATO: First of all, let me just raise an
10 objection to the testimony that was provided by
11 Mr. Bishop. Let me just say -- and I understand that you
12 are trying to give a background for the context of your
13 question -- but in these depositions, it is easier to just
14 simply ask the question.

15 BY MR. BISHOP.

16 Q. Is water considered an illegal discharge from a
17 septic system?

18 A. I am referring to Resolution No. 8313, and
19 what's prohibited is discharge of waste from individual
20 systems.

21 Q. And what is the definition of "waste"?

22 A. Waste --

23 MR. SATO: Objection; calls for a legal
24 conclusion.

25 THE WITNESS: The difference between pure water

1 and waste water is the waste water contains waste
2 constituents.

3 BY MR. BISHOP:

4 Q. Is waste considered the only -- refer to black
5 water from the septic system or is it anything in the
6 water coming out of the septic system?

7 A. If it's truly a septic system that you are
8 talking about, then I would say any water that is coming
9 out of it is waste water because by definition, a septic
10 system is a waste water treatment system.

11 Q. So if you eliminated all black water from your
12 septic system, you are still considered illegally
13 discharging?

14 A. Yes.

15 Q. Okay. Matt Thompson told me that the reason why
16 my water discharge was illegal is because it added to the
17 groundwater, and that caused the level to rise and cause
18 problems with the septic tanks. The treatment plant took
19 all the waste water and put it back into the water, back
20 into the aquifer anyway, which would have raised the water
21 table up again.

22 Now, how can one discharge be illegal and the
23 other one not?

24 MR. SATO: Objection; calls for a legal
25 conclusion. And also incomplete hypothetical.

1 To the extent that you are testifying or trying
2 to testify for Mr. Thompson, it is described as hearsay.

3 THE WITNESS: I don't agree with the premise of
4 the question insofar as you are saying that the reason for
5 the prohibition is because septic systems cause the
6 groundwater to rise. The prohibition was established by
7 the Regional Board based on a number of factors, not just
8 rising groundwater table.

9 And then as far as the difference between
10 distinguishing between causing groundwater to rise from
11 the individual systems versus the proposed project, my
12 recollection about the district's proposed project is that
13 they considered what the groundwater level would be from
14 the proposed project and had mitigations to that that
15 would not cause a problem.

16 BY MR. BISHOP:

17 Q. Okay. So the question is where do I get
18 information that I can use for coming up with a reasonable
19 solution when information provided to me from staff
20 changes? I can't go to staff and get a direct answer and
21 a correct answer. Where do I go for correct answers?
22 That has been the problem with most of the CDO holders.
23 They ask questions, and they get different answers.

24 MR. SATO: Objection; argumentative.

25 THE WITNESS: I think there is a difference

1 between having a conversation and your giving me your side
2 of the conversation. My guess is that Matt Thompson would
3 have a slightly different or possibly significantly
4 different interpretation of the conversation. And you
5 might both be right just in terms of how you are
6 perceiving the conversation.

7 So I think the answer to that is to get a letter
8 that has been reviewed and is an official document, as
9 opposed to a conversation where you might throw out
10 different ideas and a staff member might be giving you
11 some ideas off the top of their head, versus actually
12 getting some formal correspondence that has been reviewed
13 and approved and signed.

14 BY MR. BISHOP:

15 Q. Now, I am not real familiar with all the
16 legalese and everything, so I am stumbling through a lot
17 of what I did in the past and today. So one of my public
18 records request was that I asked for the original document
19 is that notified the people of Los Osos that they were
20 illegally polluting.

21 Now, you stated that four years ago, they sent
22 out this stuff. When I got the request back, they said
23 that it wasn't specific enough on asking for the document
24 since I didn't have the number of that document. And when
25 I asked Matt Thompson and Harvey Packard about it, they

1 said they didn't know of a document that said that.

2 Did you happen to bring that document or can you

3 provide a name of that document or a number, or how would

4 I get a copy of that?

5 MR. SATO: Objection; compound.

6 THE WITNESS: I believe that one of the

7 documents listed in there is the Frequently Asked

8 Questions series of documents that I referred to. I am

9 pretty sure that's part of the documents here.

10 BY MR. BISHOP:

11 Q. That's in there, yes.

12 A. Right. So I think that's in there, which means

13 you have it now.

14 Q. I have seen the Frequently Asked document, but I

15 have never seen anything that was mailed out to the

16 people.

17 A. Oh, as far as --

18 Q. Official letter saying you are --

19 A. I don't recall if that's in there or not. And I

20 can track that down and provide it to you.

21 Q. That's been one of my frequent questions for

22 staff.

23 A. It might be in there. I just don't recall it

24 offhand.

25 Q. It's only in there if it's a new documents after

1 you came on board. It's not in the old documents.

2 MR. SATO: In terms of the documents that we

3 produced?

4 MR. BISHOP: Yes.

5 MR. SATO: I think the documents that we

6 produced were also some documents that were previously

7 produced.

8 MR. BISHOP: Well, we have the previously

9 produced ones. I am saying that that document is not in

10 the previous document list.

11 MR. SHIPE: What he is saying is that he went

12 through all of the documents in the original document

13 list, and the item that he is looking for was not located

14 in that, so he is still looking for that. And the only

15 way it would be included in this is if it was one of the

16 new documents that you added.

17 Do you recall adding that document, I guess?

18 THE WITNESS: I will see if I can get that for

19 you.

20 MR. BISHOP: Okay. I would appreciate it.

21 Q. Back in 1995, Sorrel Marks brought a proposed

22 fine against the County for \$226 million for not building

23 the sewer. And I was wondering what happened to that

24 result and why it wasn't --

25 A. I'm sorry. What was the date again?

1 Q. In '95. I have seen a newspaper article that
2 she was bringing a suit against the County for not
3 starting the sewer.
4 A. That Sorrel Marks was bringing a suit against
5 the County?
6 Q. Yes.
7 A. That would never happen.
8 MR. SHIPE: She was seeking fines against the
9 County, I believe.
10 BY MR. BISHOP:
11 Q. She was seeking fines against the County.
12 A. Well, it wouldn't be up to Sorrel Marks to seek
13 fines against the County, so I don't know what the
14 newspaper article was referring to.
15 MR. SHIPE: If I may.
16 Did you attempt to bring fines against the
17 County of San Luis Obispo for -- at any time for failure
18 to institute a sewer system in Los Osos?
19 MR. SATO: I will interpose an objection that I
20 don't believe that these questions are reasonably
21 calculated to lead to the discovery of admissible
22 evidence.
23 THE WITNESS: We had status reports on
24 enforcement options for the Regional Board. And those
25 included discussion of the possibility of penalties. Now,

1 I recall status reports including that option during the
2 time that the Community Services District has been in
3 existence. Whether we had a similar status report when
4 the County, and prior to the Community Services being in
5 existence, which was '98, '99, I couldn't say for sure. I
6 don't recall.

7 BY MR. BISHOP:

8 Q. Okay.

9 A. Also, we have not always had authority for
10 administrative civil liabilities in terms of the water
11 code. So -- and I don't recall exactly when that came
12 into being. But obviously, we would not have considered
13 such a thing when we didn't have the authority to do so.

14 MR. SHIPE: Did that authority come during your
15 tenure as executive officer?

16 THE WITNESS: No. It was prior to that.

17 BY MR. BISHOP.

18 Q. On the topic of CDOs, there is a lot of things
19 that I've been told that the Board can and cannot do with
20 that. If a CDO is issued, does the Board have the right
21 to change that CDO at any time without going through a new
22 hearing or does that CDO stay into effect until a hearing
23 is imposed?

24 MR. SATO: Objection; calls for legal
25 conclusion.

1 THE WITNESS: It's up to the Board to -- it is
2 an order of the Board. And consequently, the only change
3 that can take place is by Board action.

4 BY MR. BISHOP:

5 Q. Okay. So the issuance of a CDO is a Board
6 action, and we are due a hearing at that time. If
7 alteration of that CDO is a Board hearing, are we due a
8 hearing or notice at that time?

9 A. Yes.

10 Q. The pumping schedule that was part of the
11 original CDO, did you have anything to do with the concept
12 and the idea and the time schedule?

13 A. I was heading up the prosecution team at the
14 time, so yes.

15 Q. So did a staff member suggest two months pumping
16 and the 20 percent reduction, or is that something that
17 you asked the staff to come up and think about a 20
18 percent reduction, or how did that come about?

19 MR. SATO: Objection; calls for discussion of
20 the deliberative process. Instruct the witness not to
21 answer. You can ask it a different way, if you want.

22 BY MR. BISHOP:

23 Q. The mathematical assumption of the pumping every
24 two months to come up with the percentage indicated that
25 it was based on a 55-gallon-a-day usage per household.

1 And at that rate, it concluded that there was only one
2 person living per house, mathematically. And I was
3 wondering how the person came up with an idea or who would
4 have come up with an idea of 20 percent reduction based on
5 the one person per household?

6 A. It seems to me that we had a range of reductions
7 which were based on waste water -- assumptions about --
8 reasonable assumptions about waste water production rates.
9 And also with that, assumptions about the volume of the
10 septic tank, because obviously the reduction from the
11 pumping is dependent on the value that is pumped on
12 whatever basis. So we had two different sets of
13 assumptions and came up with a range of percent reduction,
14 so there wasn't just one figure.

15 Q. Okay.

16 A. Are you asking about the 55 gallons per day?

17 Q. Well, they pulled that back out, and I am afraid
18 that they are going to put that back in, you know.

19 A. What was your question?

20 Q. I was trying to figure out what was the logic
21 behind that and how they came up mathematically that they
22 were going to do this?

23 A. Well, I answered that. It turns out to be a
24 range depending on assumptions about waste water
25 production rates. And another variable there is how many

1 people in the house.

2 Q. Right.

3 A. So if there is one person -- and I don't

4 remember if the 55 gallons per day is correct, but that

5 sounds close. That could be the figure. If there is one

6 person in the house and a 1500 gallon tank, which is on

7 the high end of the range, then the percent of reduction

8 would be much higher than if you had three people living

9 in the house, and I don't know what the average occupancy

10 is. It might be 2.-something. So if you had, say, three

11 people living in the house and they had a 1500 gallon

12 tank, the waste water production is going to be three

13 times as high, typically, and the amount that is pumped

14 out on a regular basis is going to be less. So the

15 percentage reduction is significantly less, so there was a

16 pretty broad range as far as the calculated values for

17 percent reduction.

18 Q. Okay. This is going to get a lot more

19 objections. What do you consider the status of the Tri-W

20 site project is right now, as of today?

21 A. The status of the project?

22 Q. The Tri-W project.

23 A. Well, I understand and I believe that the

24 District has stopped the contractors from continuing with

25 the project. It seems to me that they went beyond that

1 and wrote letters to terminate the project or terminate
2 the contracts, so that means the District is not
3 proceeding with the project.

4 Q. So in your sequence of events, what you envision
5 of the sequence of events, what stopped the Tri-W project?

6 A. The District.

7 Q. How did the District stop the project?

8 A. By stopping the contractors from proceeding.

9 Q. But they've only stopped the contractors in the
10 last month.

11 A. No. They stopped the contractors last October,
12 a year ago. Close to a year ago today.

13 Q. Okay. My understanding is by contract, they had
14 -- they could stop work for 30 days while they -- for any
15 reason, they had a chance to stop work for 30 days. And
16 within that 30 days, the funding was withdrawn. So what
17 stopped the project?

18 MR. SATO: Objection; asked and answered.

19 THE WITNESS: The District stopped the project,
20 which was their stated intent.

21 MR. BISHOP: Okay. I have not found anything
22 that says that.

23 Okay. The County tries to do a project. It
24 went to the CSD. The CSD tried to do a project, and now
25 the County is going to do a project.

1 Q. With the CDO on my property, what do I have in
2 options of getting a sewer project installed if these
3 organizations could not do it in the past?

4 A. Well, individuals have to work through their
5 representatives in government for such things because
6 individuals can't build a community sewer project. So you
7 have to communicate -- I guess I am a little off base in
8 giving what you should do in that regard. So maybe I
9 should stop there. But you have your elected officials
10 who represent you.

11 Q. So we are relying on our elected officials to
12 build a sewer by 2010. And since our elected officials
13 cannot build a sewer prior to this, are we still being
14 held responsible for not being able to have a sewer
15 installed?

16 A. As individual dischargers, yes, you are
17 responsible for your own waste discharge.

18 Q. Do you have anything in your records that
19 acknowledges the fact that the County accepts the fact
20 that we are illegally discharging?

21 MR. SATO: Objection to the extent it calls for
22 the knowledge of the entire records of the Regional Board.
23 It's overly broad.

24 THE WITNESS: I will attempt an answer, however,
25 in that I believe the County is fully aware of the

1 District's prohibition. Does that answer your question?

2 BY MR. BISHOP:

3 Q. The documents that I have been seeing is that

4 the County is still saying to the Regional Water Board,

5 "Prove we have a problem."

6 A. Well, that's not a question.

7 Q. So I am asking if there is a document that would

8 indicate that the County is aware that there is actually a

9 problem in Los Osos or if they are still denying it,

10 basically?

11 MR. SATO: Same objection. To the extent that

12 you are asking about whether a document exists within the

13 files of the Regional Water Quality Control Board.

14 THE WITNESS: And I will say I don't believe the

15 County is denying that there is a problem. I believe in

16 the documents that we've provided, there are documents

17 from the County referring to the problem of septic system

18 discharges in Los Osos, as far as written position by the

19 County.

20 MR. BISHOP: Did you find the document on

21 prohibition zone?

22 MR. SHIPE: Are these the documents that --

23 MR. SATO: Are you concluded with your

24 questions, Mr. Bishop?

25 MR. BISHOP: No, I asked --

1 MR. SHIPE: I'm sorry. This is the documents
2 that were mailed out.

3 MR. BISHOP: I was looking for the one that
4 supported the staff report for the prohibition zone.

5 MR. SATO: That's in here.

6 MR. BISHOP: I will conclude at this time so I
7 can find that document.

8 MR. MOYLAN: I have a couple, three or four.

9 For the record, my name is Bill Moylan,
10 M-o-y-l-a-n, and I am a CDO recipient, or a proposed CDO
11 recipient.

12 I want to thank you for coming and allowing us
13 this time to ask some questions and get some answers.

14 EXAMINATION

15 BY MR. MOYLAN:

16 Q. My first question is, Did you tell Bruce Buel,
17 either over the phone, face to face or through an e-mail,
18 that mentioning that naturally occurring nitrates within
19 the betazone of Los Osos septic systems should not be
20 mentioned to thecitizens of Los Osos because the people
21 of Los Osos would then not want a sewer?

22 A. Not that I recall.

23 Q. You didn't send him an e-mail saying, "Don't
24 mention naturally occurring nitrates in the soil because
25 the people wouldn't want a sewer"?

1 A. I don't recall such an e-mail.

2 Q. Okay. Were you aware that there were naturally

3 occurring nitrates in the soil of Los Osos?

4 A. I would think that there are naturally --

5 MR. SATO: Objection; vague as to time.

6 MR. BISHOP: Excuse me.

7 MR. SATO: Objection; vague as to time.

8 MR. BISHOP: As to time. Okay.

9 Q. During your tenure as an executive officer of

10 the RWQCB, did it ever come to your attention that there

11 were plenty of naturally occurring nitrates in the soil of

12 Los Osos, independent of the septic systems?

13 A. I would think it would be unusual to find soils

14 anywhere in our region where we don't have naturally

15 occurring nitrates from, for example --

16 Q. Dead vegetation?

17 A. -- vegetation.

18 Q. So to your knowledge, is there any way of

19 weighing the amount of nitrates in the aquifer from the

20 septics versus from the dead vegetation, through like

21 isotopic studies?

22 A. We have had that done, and others have done

23 that. Actually, some of that is in the documents that

24 were provided there. It was, I believe, part of the

25 original staff report for 8313 where a mass balance came

1 up with something like 85 percent of the nitrogen loading
2 coming from septic systems, but it took into account
3 various other possibly significant sources of nitrogen.

4 Q. Yeah. That's kind of up in the air. I thought
5 that wasn't actually determined if the majority of the
6 nitrates in the aquifer were from the septic systems or if it was
7 just a small portion from the septic systems.

8 Another question I have is, in November of 2005,
9 when Los Osos CSD directors met with representative of the
10 State Water Board and Sam Blakeslee, there was a
11 compromise, a so-called compromise worked out between
12 them. And all participants there believe they had a
13 compromise worked out as to the location of the sewer
14 which was continuing with the gravity system that was
15 engineered for the Tri-W site or a similar gravity system,
16 only moving it to the outskirts of the east side of Los
17 Osos.

18 Who scuttled that compromise?

19 MR. SATO: Objection; vague and ambiguous as to
20 the use of the term "scuttled."

21 BY MR. MOYLAN:

22 Q. Okay. If there was a compromise worked out,
23 someone was responsible for stopping that compromise to go
24 forward. Who was that?

25 MR. SATO: And further objection, lack of

1 foundation.

2 MR. MOYLAN: I don't understand. What do you
3 mean "lack of foundation"?

4 MR. SATO: Lack of foundation. It is not clear
5 that Mr. Briggs would necessarily have direct knowledge as
6 to the matter that you are specifically asking about.

7 BY MR. MOYLAN:

8 Q. Do you have knowledge, Mr. Briggs, of why that
9 compromise was -- that so-called compromise was stopped?

10 A. I can tell you what my impression is.

11 Q. Okay.

12 A. Which is that a staff member, Darren Polhemus of
13 the State Water Resources Control Board, was meeting with
14 the group that included Assemblyman Blakeslee and --

15 Q. Shirley Bianchi.

16 A. -- some members of the Community Services
17 District. I don't know if Shirley Bianchi was involved.
18 And Mr. Polhemus is staff to the State Water Resources
19 Control Board, just as I am staff to the Regional Board.
20 And the -- it was up to the State Water Resources Control
21 Board itself to make any decisions in terms of the loan
22 project, which is, I think, maybe what you are referring
23 to in terms of scuttling that compromise. So it was the
24 State Water Resources Control Board that said that the
25 loan was specific --

1 Q. Site specific?

2 A. -- to the project that was proposed by the

3 District, site specific.

4 Q. Somebody must have mentioned to members of the

5 State Water Board responsible for the SRF, the State

6 Resolving Fund, to stop it because it was site specific or

7 do you know who mentioned that to the State Water Board,

8 or who was actually responsible for stopping the funds?

9 A. Well, the State Board had already said, it

10 seemed to me, the previous January, perhaps, that the

11 project was site specific. So the State Board itself, had

12 already told the Community Services District that. And if

13 I remember correctly -- I wasn't at that meeting, but I --

14 it seemed to me I reviewed the video of it. And if I am

15 remembering the dates correctly, the Board was pretty

16 adamant that the loan was for that project only. And I

17 started to say, I think the reason that came up was

18 because there were some people at that meeting who were

19 proposing moving the project to another site, so I think

20 that's what elicited the response from the State Board at

21 that time.

22 Q. Okay. I have one more question. Well, I have

23 one more written question. I don't know if something else

24 will pop into my head before I leave this chair.

25 The latest revision to the proposed CDO, is

1 according to Matt Thompson and other people at the Central
2 Coast Regional Water Quality Board, is that all people
3 within the prohibition zone of Los Osos have their septic
4 systems inspected and pumped once between the time the
5 issuance of a CDO, or if they have evidence of having
6 pumped it within the last three years, that that would
7 meet the compliance standards, at least until January
8 2010. That includes doing any repairs deemed necessary by
9 septic system inspection.

10 This is equivalent to a septic management
11 program. Basically, this is equivalent to a septic
12 management program. Everybody has their septic systems
13 checked, pumped, repaired if they need to have them
14 repaired.

15 Why don't we eliminate issuing CDOs, if that's
16 what this is? Because the CDOs weigh heavily on the
17 people that receive them and it lowers our property
18 values. It impairs us if we want to sell our houses. So
19 why don't we just call it what it is, a septic management
20 program, and not issue CDOs? Not call it a CDO, but just
21 call it a management program and have people comply with
22 that. And then if they don't comply, use an enforcement
23 action?

24 MR. SATO: Objection; compound.

25 /

1 BY MR. MOYLAN:

2 Q. Okay. Make it as simple as you like.

3 A. I can go ahead and attempt to answer. And you

4 tell me if I missed part of the compound question. I

5 think I already responded to Mr. Shipe's question that the

6 requirements of a proposed cease and desist order, as you

7 were just outlining, are pretty consistent with at least

8 part of a septic system management zone or district. I

9 don't think they conflict in any way.

10 Q. Yes. But the mere labeling of it as a cease and

11 desist order, it's like having a loan put on your house,

12 in a way. Potential buyers may not want to buy it if they

13 can go down the street and buy a house that doesn't have a

14 lien on it or a CDO. So it's a big burden on the

15 homeowners. When in effect, as Rob mentioned earlier, I

16 am not a recalcitrant violator, I am a -- what is the

17 other word?

18 MR. SHIPE: Cooperative discharger.

19 BY MR. MOYLAN:

20 Q. -- cooperative discharger. I even had my septic

21 system pumped in May, after the April 28th hearing,

22 because I thought, "I am going to do this. I am going to

23 just get it pumped and let the Water Board know that I am

24 cooperative." So I intend to cooperate with the Water

25 Board. But just having that CDO weighing over my property

1 is a huge burden, when it doesn't really need to be. I
2 mean, you can accomplish the same goal without calling it
3 a CDO. That's my opinion. I believe that you can get the
4 same cooperation from the community without using the term
5 CDO. And it would be an act of cooperation with the RWQCB
6 and the Los Osos prohibition zone people.

7 A. Well, basically, we tried --

8 MR. SATO: There is no question.

9 MR. MOYLAN: Okay. That question was implied.

10 Q. The implication is that if you did this, if you
11 went along and removed the CDOs but just had a compliance
12 program where people needed to pump their tanks -- let me
13 put it this way.

14 Do you think it would be a better idea to drop
15 the CDOs and just have a compliance program. And then if
16 people don't comply, then issue CDOs? That would show you
17 -- now I am adding something. It think it would be
18 better.

19 MR. SHIPE: Let him answer it.

20 BY MR. MOYLAN:

21 Q. Would you please answer that question?

22 A. Do I think it would be better?

23 Q. Yes.

24 A. To have a district instead of the cease and
25 desist orders? That's your question?

1 Q. A district -- you know, a septic management
2 program where people were compelled to comply with pumping
3 their tanks once between now and 2010, rather than
4 actually issuing CDOs?

5 A. No. I don't necessarily think that that would
6 be successful in terms of having a project accomplished.
7 And to me, it's akin to the cooperative approach that the
8 Board has employed for the previous 22 years since the
9 discharge prohibition was adopted by the Board. It was --
10 basically, what you are talking about was a cooperative
11 approach through various machinations of cooperating with
12 the County, with individuals who are on technical advisory
13 committees. A lot of people have been involved throughout
14 the years. And it has always been what you are talking
15 about, more of a cooperative approach, as opposed to more
16 stringent enforcement action. That hasn't worked.

17 And so part of the reason for enforcement action
18 is to try to compel compliance. And I think by proceeding
19 with individual enforcement actions that do have some
20 accountability -- and yes, it is a burden, but that's part
21 of the reason for having an enforcement action. It's a
22 different tactic than what has been employed to 22 years
23 and hasn't worked. And you'd be hard-pressed to find any
24 other violation ongoing for that period of time. And so I
25 think that is testimony to giving the cooperative

1 approach. It's a fair shot.

2 Q. Okay. I do have one other question that's come
3 to mind. And that's, like you just mentioned, 22 years
4 you've been trying to get the community to build some kind
5 of a waste water treatment plant. Before there was a CSD
6 formed, 1983 all the way up to 1998, which is over 15
7 years, I think, we were under the County's jurisdiction as
8 far as having a sewer built. You put down the law that we
9 needed to have a sewer built by 1988. There was no
10 compliance by the County at that time, who was the
11 governing body of the area of Los Osos. 1990 -- or 1989
12 came and went, '90, all the way up to 1997, 15 years came
13 and went. And yet you say that -- the Water Board says
14 that the prohibition zone is not up for questioning
15 because of the time that has elapsed. The time for
16 questioning the prohibition zone was years ago.

17 I have a statement and then a question. My
18 statement is the time to issuing the CDOs was years ago,
19 way back in 1988 or 1989 or even 1990, to the governing
20 body that was in charge of building the sewer plant.
21 You've waited 18 years. Why now? Why not, when the
22 County was in charge of our District and they had years
23 and years to comply and they didn't?

24 A. When the County was in charge of the project,
25 they were essentially in the same mode that the District

1 was in until first part of last year. That is, they were
2 trying to proceed with the project. They were fighting
3 numerous challenges every step of the way, most every step
4 of the way, numerous lawsuits and permitting issues. The
5 same as the Community Services District faced, so we were
6 basically in the same mode in terms of enforcement.

7 We were looking at it in terms of if we
8 determine that, in our judgment, the County, and then
9 subsequently the Community Services District, were
10 proceeding as fast as they possibly could, then it wasn't
11 appropriate to have a more stringent enforcement action,
12 say administrative civil liabilities.

13 So for example, if the District was stopped from
14 obtaining a permit, or getting CEQA compliance, or
15 whatever the step in the process was because of a lawsuit,
16 and they were challenging that lawsuit, they were trying
17 to do so in a timely fashion or whatever the challenge
18 was, we felt they were doing everything they could do.
19 And it didn't make sense to us, at the time, hindsight is
20 20/20, but it didn't make sense to us to take additional,
21 more stringent enforcement action.

22 And I say "additional" because we did have
23 enforcement action in place. We had an enforcement action
24 in place which not only said that existing discharges are
25 illegal, but prohibited those with vacant lots from

1 basically using their property. They couldn't discharge
2 from a new system. They were businesses that could not
3 expand because it would be an increase in discharge.
4 There were homes that could not expand if there was an
5 increase in discharge. So that doesn't affect everybody,
6 but that is a pretty stringent enforcement action, one of
7 the most stringent enforcement actions that a Regional
8 Board can take.

9 Q. Regarding expansions and limiting expansions,
10 since I've lived in Los Osos, in the last few years, a
11 Ralphs has been built, an enormous store. And I am sure
12 their toilets are used 20 times a day by customers and
13 also the people that work there. Starbucks, you know
14 their toilet is being used 25 to 50 times a day. How did
15 they get to be permitted to put in septic systems?

16 A. Anyone who has a proposal for a building
17 addition, remodel, or anything like that, has to go
18 through a request and basically to demonstrate that they
19 aren't coming with an increase this discharge. And the
20 method that some have chosen to do that is by actually
21 acquiring other properties and eliminating those
22 discharges.

23 Q. So Starbucks, which is just a little 20-by-20
24 foot building, but it does have a toilet, two toilets,
25 maybe one, I can't remember, they've acquired a lot of

1 property in Los Osos? Because you know the toilet is
2 probably being flushed 25 times a day by the people who
3 drink their property.

4 A. I couldn't tell you about the individual
5 properties as far as what the method was. Because in some
6 cases, a property owner is able to demonstrate that
7 possibly through -- well, anyway, they might demonstrate
8 that they don't have an increase even though they have a
9 complete change in the land use. And there are other
10 instances where they do have other properties they have
11 taken out of waste water production.

12 Q. There is a big building right on the corner of
13 Los Osos and South Bay. It's a huge, new construction. A
14 couple of buildings, maybe three. I understand that the
15 person who built those buildings had to swap other
16 properties in Los Osos to get the permits to put in the
17 septic systems for those buildings, and yet the old
18 properties that he swapped or he swapped their septic
19 permits, they are still in effect and they are still
20 working. They are still flushing their toilets. I don't
21 understand how that can occur. And that's not a question,
22 but I am just saying, it seems the people who have money
23 in the town, they get to build properties, and yet they
24 are not getting slapped with CDOs. No businesses got
25 slapped with CDOs.

1 How come no businesses got slapped with CDOs?

2 A. Can I go back to what was almost a question?

3 Q. Okay.

4 A. I am not sure if the case that you are referring

5 to where there was a trade, and you said that those

6 properties were still in use.

7 Q. I think Leon -- I am not going to mention names.

8 A. I know that we did have a case recently that

9 sounds very familiar to what you are talking about. And

10 we wrote to the County and to -- I believe to the

11 discharger about that. And again, it seems to me that the

12 County has responded and indicated that we have some

13 misunderstanding. And we are having a meeting to try to

14 figure out what the facts are, so we are following up on a

15 situation that sounds very similar to what you are talking

16 about.

17 MR. MOYLAN: Okay. Thank you very much.

18 MR. SHIPE: This is Rob Shipe coming in once

19 again.

20 MR. MOYLAN: Time out.

21 (Break taken.)

22 MR. SHIPE: Once again, this is Rob Shipe. A

23 couple follow-ups.

24 /

25 /

1 FURTHER EXAMINATION

2 BY MR. SHIPE:

3 Q. Item No. 13 on the prosecution's documents list,
4 Spring 2002 Frequently Asked Questions, four flyers sent
5 to all property owners in Los Osos.

6 Is that documents that you said you -- was that
7 the documents that you said you were referring to earlier?

8 A. Yes. These are -- let's see how many they are.

9 It looks like there are four here. Pardon me.
10 It says 5 of 6. There are six here. I think that's all
11 there are.

12 Q. Was there any other information, any cover
13 letter or anything like that that was submitted with these
14 in the mailings?

15 A. I thought there was, and that's what I was
16 saying in response to Mr. Bishop is that we would try to
17 find that and provide that.

18 Q. When you mailed those out, did you mail them
19 certified?

20 A. I am not sure.

21 Q. And I forgot to do this earlier. For the
22 record, the terms "assist cooperative discharger,"
23 "recalcitrant violator," "formal enforcement" and
24 "informal enforcement" are all terms from the Water
25 Quality Enforcement -- Water Quality Enforcement

1 Procedures Guidelines that I would assume govern how you
2 do enforcement -- how you bring enforcement action; is
3 that correct?

4 A. There is a statewide enforcement policy, if
5 that's what you are referring to.

6 Q. WQEP, that's the documents that I downloaded off
7 the Water Board website.

8 A. Probably stands for Water Quality Enforcement
9 Policy.

10 Q. Procedures.

11 A. Okay.

12 Q. Okay. We did speak earlier briefly about
13 resolution R2003-007, and that was one of the prosecution
14 documents. And this is the actual document itself. Item
15 No. 7 there addresses the need for an on-site septic
16 management program?

17 A. Right. And it does refer to the unsewered
18 areas. And as I said earlier, I believe the context of
19 this was the waste water treatment plant and the
20 collection system would serve the sewerred areas and then
21 this was to kind of round out the equation as far as waste
22 discharges.

23 Q. Okay. Legally speaking, I am in one of the
24 unsewered areas in Los Osos.

25 A. That's what I am pointing out is that that

1 document was referring to the areas that would remain
2 unsewered, I believe.

3 Q. Yes. But it states unsewered areas, not areas
4 to remain unsewered.

5 A. Right.

6 Q. And I am in one of the unsewered areas of Los
7 Osos?

8 A. You are apparently testifying.

9 Q. No. It's a question. Am I in one of the
10 unsewered areas of Los Osos?

11 A. If you received a draft cease and desist order,
12 then hopefully that is accurate.

13 Q. Okay. Do you have any influence on alternatives
14 that Harvey Packard may accept as an alternative to cease
15 and desist orders in terms of enforcement?

16 MR. SATO: Are you talking about generally?

17 MR. SHIPE: I am talking about specifically to
18 this case.

19 THE WITNESS: Well, I am going to be gone, so I
20 would say no, for the next several months.

21 BY MR. SHIPE:

22 Q. Do you have any influence over the next several
23 days?

24 A. I will be seeing Harvey Packard, yes, but I
25 don't know that this subject will even come up.

1 All right. Say everything goes bad and we get up to the
2 point where we have to administer fines. Now, do the
3 fines start when all 5,000 properties in Los Osos go
4 through the CDO process or for the original 45, does it
5 start for them on that date, and then they have to pay
6 fines all the way up to where the CDO fines start on the
7 remaining 5,000?

8 MR. SATO: Objection.

9 MR. ALLEBE: I don't know if I made that clear.

10 MR. SATO: I am going to have to object that
11 it's vague and ambiguous and calls for a legal conclusion.
12 If Mr. Briggs understands your question, he can go ahead
13 and answer it.

14 THE WITNESS: Additionally, to me, it has been
15 asked and answered. I thought we already went over that.

16 BY MR. ALLEBE:

17 Q. It wasn't clear to me whether the originally 45
18 start paying fines on the date that the other 4550 begin
19 to be prosecuted or everybody goes through the CDO routine
20 and then we all get fined on that date the CDOs are all
21 completed?

22 A. One point is that it's up to the Regional Board
23 ultimately to make that decision. That would only be
24 after the prosecution staff would decide to propose a
25 separate proceeding for administrative civil liabilities,

1 so those two things would have to happen. And I can't, as
2 I said earlier, I can't say exactly how that would work.
3 I was just saying that my opinion is in terms of fairness,
4 it would make sense to have everyone on an equal footing.

5 Q. Start on the same date?

6 A. Regardless of the fact that there are going to
7 be earlier individual enforcement actions and later
8 individual enforcement actions, but that's just my
9 opinion.

10 Q. But the fines would probably start everyone on
11 the same date?

12 A. It's just my opinion.

13 Q. Okay. Who approved the selection process for
14 the original 50 CDOs?

15 A. I was ultimately responsible for deciding that
16 there should be a random selection process. And then
17 staff followed through with the specific methodology for
18 doing so, and we described that in the staff report.

19 Q. Okay. Let's see here. Okay. Was there a
20 particular reason why there were no outside witnesses to
21 the selection process? It's my understanding there were
22 just two from the Water Board and -- one person from the
23 Water Board and one secretary that witnessed the random
24 selection.

25 A. That's not my understanding. My understanding

1 was it was -- and I could be wrong, but I thought it was
2 Matt Thompson and Allison Mulholland.

3 Q. I wasn't sure of the name of the assistant, but
4 it was Matt Thompson?

5 A. Allison Mulholland is a technical staff.

6 Q. And that's not his secretary. She is another
7 employee?

8 A. Correct.

9 Q. Okay. But there were no outside witnesses from
10 the defense side that actually observed the random
11 selection?

12 A. Correct, because there weren't any defendants,
13 as you refer to them, until they were selected.

14 Q. Okay. Was -- I haven't heard affordability ever
15 discussed concerning the project. Do you have any lines
16 on that, whether it was discussed at all?

17 A. What project?

18 Q. The -- well, the project we are referring to
19 here, the Los Osos waste water.

20 A. For the Tri-W project?

21 Q. Wait a minute. Just the affordability in
22 general. That's been the problem, as you call it, for the
23 last 22 years is basically affordability. And the
24 citizens have been filing lawsuits, whatever, to keep
25 themselves from paying these horrendous costs. And has

1 that subject ever been discussed with the Water Board,
2 just for the citizens to pay for it?

3 A. Sure. That's been discussed. As you say, it's
4 been brought up many times in many different forums for
5 years. And the irony is the more people have fought the
6 project because of affordability, then the more expensive
7 the project has become over the years.

8 Q. CDOs, myself and the other 45, what is our
9 relation to the County plan? When the County takes over
10 the project, where do the CDOs stand? Do we still have a
11 CDO hanging over our heads?

12 A. Assuming that the Regional Board adopts the
13 cease and desist orders, then the only entity that can
14 change those, as I've already testified, would be the
15 Regional Board. So they would stay in effect regardless
16 of the status of the project until the Regional Board
17 takes some action on them subsequently.

18 Q. So if the County, in other words, drops the
19 ball, we will pay for it, the CDOs?

20 A. The cease and desist orders have the 2010
21 compliance date. I should say the proposed cease and
22 desist order, and there is a provision in the proposed
23 cease and desist order on page 4 that indicates that the
24 executive officer may extend the due date for any
25 requirement of Section B for up to 90 days for

1 circumstances beyond the dischargers reasonable control.
2 And actually, that's referring to the interim compliance
3 requirements. That isn't what I was looking for.

4 So on page 3, at the bottom of page 3, this is
5 where it is referring to the 2010 compliance date. It
6 says, "The dates may be revised by executive officer to be
7 reasonably related to progress in constructing waste water
8 system for the community. The executive officer may also
9 extend the due date for any interim or reporting
10 requirement of Section A for up to 90 days for
11 circumstances beyond the discharger's reasonable control."

12 Q. And if that section is violated, then, past that
13 90 days, do we start paying fines automatically or does
14 that have to come from the Board?

15 A. Monetary penalties are not automatic, and they
16 would be subject to the same kind of proceeding in terms
17 of, as I was answering Mr. Shipe earlier, in terms of
18 notice to a discharge, opportunity to comment and a
19 hearing.

20 MR. SHIPE: May I see that?

21 THE WITNESS: It's on our website.

22 MR. ALLEBE: That's all I've got. Thank you.

23 MR. SHIPE: I would just like to state for the
24 record that all the questions and statements from each of
25 the defendants here are representative of their own views

1 and do not necessarily reflect the position of the other
2 defendants here or any defendants that are not present and
3 are not aware of these proceedings.

4 MR. SATO: Understood.

5 MR. SHIPE: With that, I would like to end today
6 but keep the possibility open for continuing this
7 deposition in the future.

8 MR. SATO: You can't do that. I mean, I don't
9 think that you are legally able to do that. I object to
10 that. And as far as we are concerned, today is the day.
11 We are here to be here to answer all the questions that
12 you had. We brought the documents. We don't think it's
13 appropriate for you folks to bring Mr. Briggs back, and we
14 don't think it is going to be appropriate for anybody else
15 to bring Mr. Briggs in at this late date.

16 MR. SHIPE: But we may need to talk to him again
17 in April.

18 MR. SATO: April 2007?

19 MR. SHIPE: I am pretty sure no one here
20 expected us to be here today back in January when we
21 started this case.

22 Is that fair to say, Mr. Briggs.

23 THE WITNESS: It was I pretty hard to predict
24 how things would go.

25 MR. SHIPE: Exactly. And this case has been

1 unpredictable with lots of twists and turns. And I just
2 want to leave my rights open in case the unpredicted
3 develops again.

4 MR. MOYLAN: I would like to add one question
5 before I go, if that's all right.

6 MR. SHIPE: Would you like to address my issue
7 first?

8 MR. SATO: I'll address them all at the same
9 time.

10 FURTHER EXAMINATION

11 BY MR. MOYLAN:

12 Q. In your last statement, Mr. Briggs, you used the
13 term "beyond the discharger's reasonable control." If
14 there is no sewer plant or waste water plant built by
15 January of 2010, that would be beyond the homeowners in
16 the prohibition zones reasonable control. If we can't
17 build the sewer on our own individually, we have no
18 control to do anything if there is no sewer there, the
19 question would be, What would be expected of us at that
20 time if it's beyond our reasonable control if there is no
21 sewer to hook up to? What would the Board expect of us?

22 MR. SATO: I will object to the question to the
23 extent that it calls for Mr. Briggs to testify about what
24 the Board would expect. Secondly, I think it's an
25 incomplete hypothetical because you are asking him to

1 speculate about something in the future without any
2 complete set of facts that he would have to be able to
3 evaluate to determine how that would impact that
4 particular clause.

5 MR. SHIPE: Do you want me to try it?

6 FURTHER EXAMINATION

7 BY MR. SHIPE:

8 Q. If by January 1, 2010, the County has not built
9 a project but is currently in the process of designing a
10 project, would that result in a continuance?

11 MR. SATO: I will make the same objection that
12 it is an incomplete hypothetical and calls for
13 speculation.

14 MR. SHIPE: What would I need to complete it?

15 MR. SATO: There is no way you can complete the
16 hypothetical because there are so many facts that would
17 potentially get into Mr. Briggs' consideration; however,
18 he can still answer.

19 MR. SHIPE: Yeah.

20 THE WITNESS: And I guess my answer is I think
21 there is plain language here. It says that the compliance
22 dates may be revised to be reasonably related to progress,
23 and so I think the purpose is to provide for some leeway
24 if there is reasonable delay in progress as opposed to an
25 unreasonable delay. And my suggestion would be if you

1 don't think that is clear, you have an opportunity to make
2 your statement to the Board on what you think would be
3 more clear.

4 MR. SHIPE: Okay.

5 MR. SATO: As far as we are concerned, we
6 believe this deposition is over, particularly with regard
7 to proposed cease and desist order Nos. R3-2006-1001
8 through R3-2006-1050. And thank you.

9 Let me just say on the record, from our
10 perspective -- and also we would like the deposition
11 notice to be sent to me. And we are not sure whether
12 Mr. Briggs will actually have the opportunity to review
13 the transcript.

14 THE WITNESS: You mean the transcript.

15 MR. SATO: Excuse me. The deposition
16 transcript. We are not sure that he will actually have
17 the opportunity to review it, but that will be our
18 responsibility to make sure the deposition transcript gets
19 reviewed. What we would like to do is submit to you,
20 rather than having him come in and read the deposition, to
21 be able to submit any corrections or comments through my
22 office.

23 Is that acceptable?

24 MR. SHIPE: Yes.

25 (Discussion off the record.)

1 MR. SHIPE: And regarding your statement, that
2 it should cover all cease and desist orders, I want to
3 make the point that the Regional Water Quality Control
4 Board refers to the cease and desist orders in that
5 general manner, but the cases represented at this hearing
6 do not include all 45 cease and desist orders that were
7 issued. It includes mine, No. 1024.

8 Anyone else know their numbers?

9 MR. ALLEBE: 19.

10 MR. SHIPE: 1019.

11 MR. MOYLAN: 41.

12 MR. SHIPE: 1041.

13 MR. MOYLAN: Just due to the lack of timing, we
14 couldn't notify everybody else.

15 MR. SHIPE: We made -- our original request was
16 for a date at near the end of next week. We accommodated
17 your schedule to allow the hearing process -- to allow the
18 deposition process to go forward today. That did not
19 afford the proper timing necessary to notify the rest of
20 the Defendants of these procedures. And so these
21 procedures in no way affect the other defendants in this
22 case.

23 MR. SATO: So you say. And you know, we've
24 taken -- we've made our statement. We have advised
25 Mr. Thomas on where we stand on advising anybody else who

1 chooses him to contact him for a deposition notice or
2 subpoena. So you folks have been able to ask your
3 questions. We will see what happens with the other folks.
4 MR. MOYLAN: We can subpoena other people,
5 right?
6 MR. SHIPE: Yeah.
7 THE REPORTER: Did you want a copy?
8 MR. SATO: Yes. And I'd like an ASCII disc and
9 a condensed.
10 (Deposition concluded at 12:57 p.m.)
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WITNESS'S CERTIFICATE

I, ROGER W. BRIGGS, DECLARE THAT THE
ANSWERS TO THE FOREGOING DEPOSITION ARE TRUE TO THE BEST
OF MY KNOWLEDGE AND BELIEF.

DATED THIS _____ DAY OF _____,
2006.

ROGER W. BRIGGS

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REPORTER'S CERTIFICATE

I, CAROLYNN ELAINE SPERE, A
CERTIFIED SHORTHAND REPORTER IN AND FOR THE STATE
OF CALIFORNIA, DO HEREBY CERTIFY:

THAT, PRIOR TO BEING EXAMINED, THE WITNESS
NAMED IN THE FOREGOING PROCEEDING WAS BY ME SWORN TO TELL
THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH.

THAT SAID DEPOSITION WAS TAKEN BEFORE
ME AT THE TIME AND PLACE THEREIN SET FORTH AND WAS
TAKEN DOWN BY ME IN SHORTHAND AND THEREFORE REDUCED
TO COMPUTERIZED TRANSCRIPTION.

I HEREBY CERTIFY THAT THE FOREGOING
DEPOSITION IS A FULL, TRUE AND CORRECT TRANSCRIPT
OF MY SHORTHAND NOTES SO TAKEN.

DATED AT SAN LUIS OBISPO, CALIFORNIA,
THIS 15TH DAY OF NOVEMBER, 2006.

CAROLYNN ELAINE SPERE
CERTIFIED SHORTHAND REPORTER